UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

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In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

United States Bankruptcy Court

Tele/Video Proceedings

300 Quarropas Street, Room 248

White Plains, NY 10601

September 1, 2021

10:06 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: JUSTIN WALKER

HEARING re Bench Ruling at 10:00 AM at Videoconference (ZoomGov) (RDD).

Statement / Notice of Change of Listen-Only Dial in for Hearing on Confirmation of Eleventh Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors

Notice of Agenda / [Updated] Third Amended Agenda for Confirmation Hearing

Notice of Agenda / Third Amended Agenda for Confirmation Hearing

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Okay. Good morning. This is Judge Drain. We're here in In re Purdue Pharma, LP, et al. This morning's hearing was scheduled for me to give my bench ruling on the Debtors' request for confirmation of their amended Chapter 11 plan. I received a blacklined version of certain important but still relatively minor changes to the Debtors' tenth amended joint Chapter 11 plan yesterday which is now, in light of those changes, the eleventh amended joint Chapter 11 plan.

I also received a revised proposed confirmation order including proposed findings of fact and conclusions of law which is over 100 pages long. I have not gone through it in detail. My ruling will be detailed, and if I'm comfortable with the proposed findings and conclusions, I'll keep them. I may add to them. And my ruling will be part of the record as far as the proposed findings and conclusions are concerned.

But I understand that the Debtors wanted to address the Court briefly regarding the changes to the plan and the resolution of at least one objection. And I'm happy to hear that.

MR. HUEBNER: Thank you very much, Your Honor. Can you see and hear me clearly?

THE COURT: Yes.

MR. HUEBNER: Okay. Your Honor, for the record, Marshall Huebner on behalf of the Debtors and Debtors In Possession. A couple of quick updates which I think are hopefully positive.

Number one, you know, since the Court's direction at several of the hearings including both Wednesday and Friday, various documents have been amended in a way that we hope now comports with the Court's vision. The primary changes to the plan that we are not going to walk through unless the Court has questions are to finalize what I would call the material or maybe even radical narrowing of the Sackler releases, which is really on three different axes:

Number one, which parties are covered and get the benefit of the releases and those changes I believe are now in;

Number two, what is the scope of the releases. And, of course, the Court gave a clear direction that they should be limited very substantially as to scope compared to the original set of agreements reached and filed by the parties;

And then, number three, I guess who is bound by the releases. This is the sort of "any other person to holders of claims and causes of action" to just "holders of claims." And I believe that hopefully we got it right after several tries and the Court's continuing clear interim

rulings or directions to narrow the releases.

The second item, Your Honor, just for the benefit of everyone's knowledge is the operating injunction for NewCo. That is one of the many documents along with many other structures in the plan including a brand new board of directors and other things selected by governmental entities to ensure that NewCo does only the things that everybody would want it to be doing and doesn't do any of the things that people would not want it to be doing. And that's obviously I think part of the sacred mission of many of the parties who have worked on this case.

That operating injunction was negotiated by the Department of Justice by the Ad Hoc Committee which of course includes a huge number of AGs, by the NCSG which includes all the rest of the AGs getting us up to 48, and the MSG, as well. That has now in fully-agreed form, and it's final and was filed as Exhibit C like Charlie to the confirmation order. That's a critically important document, frankly, as part of ensuring that on a go-forward basis, you know, everybody can hopefully take comfort in the credible involvement of governmental entities and, of course, the UCC as well who I, of course, need to mention as the official appointee of the Department of Justice to oversee and assist all unsecured creditors in the case.

Next, Your Honor, also filed I believe yesterday

is the final Sackler settlement agreement which has been a very long time coming. Just so the record is clear, that document was negotiated by the Official Committee of Unsecured Creditors appointed by the Department of Justice, by the AHC, by the MDL PACA members who are part of the AD Hoc Committee which includes obviously several dozen attorneys general and, of course, lastly really by the Special Committee of Board which, of course, as everybody knows after an examination was likewise found to be fulfilling its fiduciary responsibilities with complete and total independence.

So that document is now done, as well. It contains very important things because this is a deal in which the Sacklers are paying over time and frankly something that sounds lawyerly and technical, which are the collateral and the credit support annexes frankly involve some of the most brutal negotiations that actually took months because all of the fiduciaries on our side of the V who represent the Plaintiffs in the case and, you know, frankly, the states and the cities and the victims and the like, you know, need to ensure that the Sacklers are going to pay.

And, obviously, credit and collateral and covenants and promises and oversight rights and the like are quite critical to that, and those have now been, we believe,

negotiated to a place that we can live with. As the Court has heard me say many times, you know, this is not a perfect deal. We would have liked more and earlier, but this was the deal that everybody was ultimately willing to agree to under very very complex circumstances.

Finally, Your Honor, it just goes without saying that I believe we incorporated everything the Court said. One of the things that the Court will see is paragraph 7A of the proposed confirmation order now further clarifies that no material or substantive changes can be made to the settlement agreement, essentially, and that it's not -- this is the deal. The deal is done, and there will not be, you know, any further material certainly concessions to the Defendants in this case subsequent to the order being entered and the documents having gone final.

Number four, Your Honor, there was a filing we found a little bit puzzling by the U.S. Trustee yesterday. They called us yesterday and raised a question about language in our proposed confirmation order that they believe could be read ambiguously as somehow being -- I think the theory was like a ruling by this Court that this and other courts can't grant future stays. We didn't remotely read it that way. It certainly was nobody's intent and, frankly, it's completely standard language that's in dozens of confirmation orders.

We said, absolutely, let's clarify it. We thought they were sending language; they didn't. Instead, they just filed a pleading on the docket expressing their concern about the ambiguity. I guess that's fine. And we jumped right on it and instantly drafted language that we think makes it clear beyond perventure that there's no possible argument since of course this Court never would, never could, and no one would ever ask it to, you know, try to issue something about future stays.

The point is just we took out the Rule 3020(E) waiver of the 14-day stay so this case does have the 14-day stay under Rule 3020(E). And all the language says is that other than that stay, no other stays are currently in place. Obviously, if somebody moves for a stay and they get a stay, we'll all deal with that at the time and, obviously, we'll be ready to discuss that since many parties in this case certainly have strong views. So that has been addressed.

They did make a point about 1127. I just want to be clear. I think all of the many fiduciaries in this case are extraordinarily comfortable beyond a shadow of a doubt, frankly, that the changes to the plan have just made it better and better for the estate as, for example, to give the primary example, we have continued to narrow the scope of the releases in draft after draft while getting the same amount of consideration from the Defendants.

So there's no limitation on the number of times you could amend the plan. The law is very clear which is you can't adversely affect creditors and stakeholders at a juncture like this. The U.S. Trustee is not suggesting we have. It almost seems more like amusing to me, but I do want to be very clear we believe that all of the changes in this plan that have happened really since it was originally filed in March and certainly collectively but even individually have done nothing but improve it further and further and further for the stakeholders for whom many of us serve as fiduciaries.

Obviously, they also indicate that they stand on their objection as to both legal fees and the legality of third-party releases. We certainly understand that. No one else refiled their objection to make clear that it's still standing. We understand. We don't pretend that all objections are resolved, but certainly things have been narrowed and many items have been resolved.

Finally, Your Honor, the last I think good-news announcement and I'll turn over the podium in a minute to Mr. Gleit is that I believe that there is now agreed language to effectuate the Court's in essence ruling on Friday about what the Court was and was not willing to do with respect to the DMPs based both on the pleadings and the factual record of the case. And so, you know, while that's

not a settlement, it is simply language that we believe effectuates the Court's ruling. You know, I'm hoping that that issue is now behind us, as well.

And so, Your Honor, with all of those updates, I think it's fair to say that I should stop talking except to note that I think we're now down to at the end, you know, a very small number of the core objections about which we heard both extensive trial testimony and argument. And so I have no further updates I can announce because that's not where we are.

But, you know, the final, you know, ten or so sort of meta-objections have been resolved. We still continue to work with all parties and hope that we can come to a resolution. But it's just not where we are this morning.

So, Your Honor, unless the Court has questions for me, I think that that actually sort of updates the Court and all parties on what's been filed, why it was filed, which things are now in the "done" pile, obviously, but for Your Honor's comments, it goes without saying. and I have proposed to turn my mic off and as Mr. Gleit to quickly summarize the documentation on the DMP issue that Your Honor gave guidance on. And I think we have nothing further to say from the Debtors.

THE COURT: Okay. Thank you.

MR. GLEIT: Good morning, Your Honor. Jeffrey

Gleit, post conflicts counsel for the Debtors.

THE COURT: Good morning.

MR. GLEIT: Good morning. Your Honor, we heard you loud and clear last Friday. And over the weekend and the beginning of this week, we worked with the DMPs and the AHC to work on language which I'm just going to briefly now put in the record a brief statement which says:

"The Debtors and the DMPs have agreed that the language inserted into 10.10(B) of the eleventh plan reflects the Court's statements made in connection with the DMPs' reserved objection. In addition, the parties agree that the Debtors would state on the record" -- which I'm doing now -- "Section 8.8(B) of the plan does not apply to the settling Co-Defendants."

And, lastly, a provision was added to the confirmation order which is going to make clear that any MDT insurance settlements going forward are going to be upon notice and in accordance with Bankruptcy Rule 9019.

So unless Your Honor has any questions, I think the issue is now resolved.

THE COURT: Okay. All right. Ms. (Indiscernible), is that correct? Does that language in the plan and the statement that Mr. Gleit just made resolve the remaining objection by the MDP parties or sometimes referred to as the Co-Defendants?

WOMAN: Yes, Your Honor; it does. Thank you.

THE COURT: Okay. And I just want to be clear. As I understand it, it leaves open the issues that I said should be left open, which includes potentially as a defense whether the rights to coverage under a policy were released under the agreement between the parties. But if in fact those rights are direct and established, then as I read the plan, it gives the -- that party that has that, those rights access. They're not enjoined by the insurance injunction.

WOMAN: That's our understanding, Your Honor. Thank you.

THE COURT: Okay. Very well. I appreciate the parties' work on that.

All right. I think that concludes the first part of this hearing which really just went to clarify as noted the recent changes to the plan and updated me on the status of the settlement agreement with the Sackler parties. So I'll give you my bench ruling now on the Debtors' request for confirmation of the eleventh amended joint Chapter 11 plan.

It is clear that the wrongful use including marketing of opioid products has contributed to a massive public health crisis in this country and elsewhere. The role of these Debtors and their owners, and this is a closely-held set of Debtors, to that crisis makes the

bankruptcy cases before me highly unusual and complex.

This is so primarily because of the nature of the creditor body given the extraordinarily harmful effects of the Debtors' primary product, OxyContin, and other opioids on ordinary people as well as on the local governments, Indian tribes, hospitals and other first responders, states and territories, and the United States who must address these effects on a daily basis. In a very real sense, every person in the range of the Debtors' sell of opioid products is a potential creditor.

Bankruptcy cases present a unique and perhaps the only means to resolve the collective problem presented by an insolvent debtor and a large body of creditors competing for its insufficient assets, including especially when dealing with mass claims premised on a harmful product that, as is the case here, causes massive harms or mass harms.

Bankruptcy cases focus the solution away from individual litigation to a fair collective result subject to the unique ability under the bankruptcy laws to, under generally well-defined and rare circumstances, bind holdouts who could not otherwise be bound under applicable able.

Over the years, courts and the parties to bankruptcy cases have refined and improved on these solutions. They clearly have been brought to bear here in these cases involving in all likelihood the largest creditor

body ever. And I'm not speaking solely of the roughly 614,000 claims that were filed, although I believe that is a record, but also as I noted before the people who could arguably be said to be represented by their local governments and their state governments as well as by the United States.

Here, too, the parties have worked in unique and trailblazing ways to address the public health catastrophe that underlies those claims. These cases are complex, too, because the Debtors' assets include enormous claims against their controlling shareholders and in some instances directors and officers who are members of the Sackler family whose aggregate net worth, through greater than the Debtors, also may well be insufficient to satisfy such claims and other very closely-related claims against them that are asserted by third-parties who also are creditors of the Debtors, that is have claims against the Debtors.

The questions then are how can such claims be resolved to best effect for the claimants and is such resolution authorized under the Bankruptcy Code and law. The primary questions for me in this case focusing on the Chapter 11 plan that is before the Court for confirmation is can these issues be resolved by the Court by approval of the plan and should they. It is clear to me after a lengthy trial that there is now no other reasonably conceivable

means to achieve this result.

I believe it is also clear under well-established precedent that with a sufficient factual record, Congress in the Bankruptcy Code and the courts interpreting it provide the authority for such a resolution. That leaves the question should this resolution be implemented. This ruling explains my findings and conclusions with respect to all of those issues informed by the record of these cases, the parties' votes on the plan, the parties' briefing, and the record of a six-day trial involving 41 witnesses in a courtroom full of exhibits and two full days of oral argument.

I will note before I proceed that I am giving this ruling as an oral bench ruling as opposed to writing a written opinion because I believe it is of critical importance that the parties to these cases learn the result of my analysis as promptly as practicable.

As I often do with lengthy bench rulings, I will go over the transcript of my ruling. And if I feel that I have said something inartfully or left something out that I should have said and, of course, in addition to correcting any typos or missed citations or citations in improper form, I will modify my bench ruling and file it as a modified bench ruling, not obviously as a transcript.

But, again, as with any case of this size and

particularly given this case where the parties I think universally have made it clear, and I fully understand them, that it is important to devote the Debtors' resources as soon as possible to paying victims' claims and otherwise abating the opioid crisis, that there should not be any further delay in my delivering this ruling.

The notice of the Debtors' request for confirmation of the plan was set forth by Jeanne Finegan in her declaration and testimony, primarily her third supplemental declaration which served as her direct testimony but also referred to prior declarations that she had provided with respect to the noticing of claimants and potential claimants in these cases.

It is clear from her testimony that the notice of, A, these bases; B, the right to assert a claim against these Debtors; C, the request for confirmation of the plan; and D, the proposed broad release of third-parties' claims against the released parties in the plan which is primarily of the Sacklers and their related entities, was unprecedentedly broad with only one caveat.

Ms. Finegan's testimony was undisputed that the Debtors' noticing program as implemented under Ms. Finegan's supervision reached roughly 98 percent of the population of the United States and a only marginally smaller number or percentage of the population in Canada and also was

extensive throughout the world where the Debtors' own products might have caused harm.

The program was carefully tailored to reach known creditors but also to reach the population at large including through various types of media aimed at people who may have been harmed by the Debtors' products. Ms. Finegan's calculations reflect literally billions of hits on the social media and internet notices as well as, of course, reliable studies of the reach of the other means of notice.

The caveat that I would have is that the notice to those in prison was in part effective, I believe, in providing notices to prisons and to groups working with or known to work with people who are in prison and suffering from opioid use disorder or other adverse effects of opioids. But it is certainly within my contemplation that given prison regulations and at times lack of access to TV and radio and other media, prisoners may not have gotten the same high level, and I'm talking again about approximately 98 percent of the entire U.S. population, of notice of the case, the bar date, the confirmation request, and the releases in the plan.

On the other hand, the Debtors and the plan including the personal injury trust procedures have made it clear that they are flexible with regard to late claims against the personal injury trust and the assertion of

evidence to the trust by prisoners in light of prisoners' unique circumstances.

United States Trustee also suggested that references to the plan in the notice would have sent a party to a lengthy and complex set of release provisions. This is true, and it clearly does take a lawyer to parse through those provisions. And even then, as reflected by the record of the parties' responses to my comments, those provisions were subject to some potential for differing interpretation, although I believe that is not the case now that they have been narrowed.

However, the notice that was most widespread was a very simple one that made it quite clear that the plan contemplated a broad civil release of the Debtors' shareholders, the Sacklers, and their related entities. In addition, the extensive media coverage of this case also made that point crystal clear. And it is that aspect of the release rather than parsing through it that is the basis for the objections that have been filed and, therefore, that could have been filed, i.e., that it is too broad and not authorized under applicable law, which I believe was pervasively spread throughout the country and in Canada.

So I conclude that the Debtors' notice of the confirmation hearing and the proposed releases in the plan was sufficient and, again, unprecedentedly broad.

Next, I should note the vote on the plan by the classes entitled to vote. It is important to address this issue up-front because if a plan is not accepted by an impaired class in its vote, the plan proponent must proceed under the so-called cramdown provision of the Bankruptcy Code, Section 1129(b). On the other hand, if all of the impaired classes have voted in favor of confirmation of the plan, the Court analyzes only Section 1129(a)'s requirements for confirmation and the incorporated provisions of the Bankruptcy Code related to it such as Section 1122 and 1123 of the Code.

Based on the ballot declaration and testimony of Christina Pullo, this plan received I believe also an unprecedented number of votes cast. And of the votes cast, the plan was in fact accepted by every voting class, thus, obviating the need to proceed with the cramdown provisions of the Bankruptcy Code.

In addition, and significantly, each voting class voted overwhelmingly in favor of confirmation of the plan. On average, the vote was over 95 percent in favor of confirmation of the plan. That, too, is a remarkable result given the very large number of people who got notice, who were entitled to vote, and who actually voted. And the unprecedentedly large number applies to each of those categories.

On the personal-injury claim side, the vote was roughly 97 percent. In all cases, it was above 95 percent except with regard to the hospital class which was just under 90 percent, which however -- no member of which, however, has actually objected or has an extant objection to the plan.

I will address separately two objections that allege that the votes should be looked at differently, first, that the plan improperly classified certain claims with other claims and that if they had been classified differently in a separate class, the vote would not have been as overwhelming, although it's acknowledged by those objectors that it would still have been over 75 percent as far as the super majority voting in the class, which is the figure that Congress provided for in Section 524(g) of the Bankruptcy Code when setting a higher bar for the release or channeling of third-party claims in cases where the claims are asbestos liability-related. Again, I will address those classification points separately.

In addition, and frankly baffling to me, the United States Trustee has argued that I shouldn't just look at the votes cast but at the votes that were not cast in determining whether the plan was overwhelmingly accepted. That, of course, is not how elections are conducted. There is no conceivable way to determine the preferences of those

who didn't vote other than that they didn't object and they took no position in a "no" vote.

But where a vote is as extensive as this with hundred -- well over 100,000 people voting, under any measure, this plan has been overwhelmingly accepted. And, of course, it is the vote that counts under Section 1126 of the Bankruptcy Code and in every election, not a statement by a bureaucrat or his or her sense of where the wind is blowing. That's why we have elections.

A plan proponent has the burden of proof on all of the applicable elements of Section 1129(a) that must be satisfied for a plan to be confirmed. That burden of proof is satisfied by a showing that the applicable provision has been met by a preponderance of the evidence. In Re Ditech Holding Corp, 606 B.R. 544,554 (Bankr. S.D.N.Y. 2019) and the cases cited therein.

Many of the provisions of Section 1129(a) that are applicable to this plan are uncontested. And based on my review of the relevant witness declarations, including the declaration of Jon Lowne, John Dubel, and Jesse DelConte, I conclude that the uncontested -- that with respect to the uncontested provisions of Section 1129(a), the Debtors have carried their burden of proof.

The provisions of Section 1129(a) that have been contested by the remaining objections are Section 1129(a)(1)

which states that the plan must comply with the applicable provisions of this title, i.e., the Bankruptcy Code, which incorporates for purposes of the objections that were filed Sections 1122 and 1123(a)(4) of the Bankruptcy Code.

In addition, certain objectants have contested that the Debtors have not satisfied their burden to show under Section 1129(a)(3) that the plan has been proposed in good faith and not by any means forbidden by law.

The United States Trustee has objected that the payment of certain fees, that is legal fees and expenses, under paragraph 5.8 of the plan, violates Section 1129(a)(4) of the Code which states that it is a requirement for confirmation that any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan for services or for costs and expenses in or in connection with the case or in connection with the plan and incident to the case has been approved by or is subject to the approval of the Court as reasonable.

Certain objectors have also contended that the plan proponent has not satisfied the so-called "best interests test" of Section 1129(a)(7) of the Bankruptcy Code which requires a showing that with respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan or, that is for

those who have not accepted the plan, will receive or retain under the plan on account of such claim or interest property of a value as of the effective date of the plan that is not less than the amount, excuse me, that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of this title on such date.

The objectors who have raised this provision contend that because they're third-party claims against the released parties, the shareholder released parties, are being channeled to the plan trust or otherwise precluded because of the distribution that they would be receiving under the plan, whereas they will not be in a Chapter 7 liquidation, the plan fails the so-called "best interests test" comparing that liquidation recovery to the recovery under the plan.

Finally, there has been a suggestion, although of the faintest kind, that the plan does not satisfy Section 1129(a)(11) of the plan, the so-called "feasibility test" Which states that confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor under the plan unless such liquidation or reorganization is proposed in the plan. I will address each of those individual objections shortly.

Although I can find at this point that the plan

does satisfy the so-called "feasibility test" under Section 1129(a)(11), as set forth in the uncontested fact declaration of Mr. DelConte showing projections and the assignability of the Debtors' insurance, the only -- and I would say this again -- nebulous objection on this point was by the holders of certain claims asserted by certain Canadian municipalities and First Nations which contended, albeit I think only at oral argument, that the treatment of those creditors under the plan would be sufficiently disagreeable to the Canadian court presiding over the ancillary CCAA proceeding in Canada when the Debtors request recognition of the plan.

First, based on my understanding of the model law on cross-border insolvencies, which forms the basis of Chapter 15 of the Bankruptcy Code as well as the CCAA provisions providing for recognition, I am reasonably comfortable that the Canadian court will recognize the plan, although of course that is the decision for the Canadian court, and not view the plan as unduly discriminatory against Canadian creditors of the Debtor or Debtors in light of what they would reasonable recover from the Debtors if this plan were not confirmed and the different nature of the regulatory regime that governs the Canadian creditors than their U.S. counterparts, i.e., Native American tribes and municipalities in the U.S.

It is also my belief that the public policy exception to recognition under the model law on cross-border insolvencies would not be applied by the Canadian court given the narrow nature of that public policy exception, although again, of course, that decision is one to be made by the Canadian court.

Further, it appears to me, again, based upon Mr. DelConte's declaration that while recognition is important and would bring clarity and finality to the claims of Canadian creditors against these Debtors, the absence of recognition is not critical to the survival of NewCo under the plan and, therefore, that in any event the feasibility test would be met.

I will note further that the plan makes it clear that with respect to any Canadian creditor that has a claim against Purdue Canada which is not a debtor here or a claim against any of the shareholder-released parties that is unrelated to a claim against the Debtors here, i.e., for example, a claim against them because of their role in Purdue Canada, those rights are expressly preserved under the plan.

Most of the objections to confirmation of the plan are based on the objectants' contention that the settlements provided for in the plan either are not warranted under applicable bankruptcy law or are beyond the Court's power,

even if warranted under bankruptcy law, to approve and impose. Before addressing those issue, however, I will address the other remaining objections to the plan's confirmation.

The first set of objections that I will address have been raised by certain insurers, Navigators Specialty Insurance Company, American Guaranty and Liability Insurance Company, and Steadfast Insurers and joined in by National Union Insurance Company. I will note that another insurer objection made by the Chubb Insurance USA Group has been withdrawn.

The Debtors seek certain findings in the confirmation order regarding the effectiveness of the transfer of the Debtors' insurance or insurance rights to the trust established under the plan to fund and make distributions to creditors. They also seek findings regarding the plan's settlement of opioid claims, namely that the treatment of opioid claims under the plan or insured claims under the plan or arguably insured claims does not have the effect of impairing any applicable insurance coverage as a bona fide fear of settlement on due notice to the objecting insurers as well as the other insurers who did not object.

The plan does not seek extensive findings as to the Debtors' insurance. It, for example, does not seek a

declaration that any insurance coverage or insurance rights actually apply. That is the subject of a separate litigation that will take its own course. Rather, the findings that the Debtors seek are integral simply to the effectuation of the transfer of insurance and insurance rights to the trust from the Debtors and to obviate a defense that the plan itself in providing for a means to pay opioid-related claims somehow derogates the insurers' rights to review and consent to the payment of an insured claim.

The objectors contend that the plan and confirmation order should be "insurance neutral, i.e., postponed for another day the need for even these findings." There is no such concept or requirement that a plan be insurance neutral. And where a plan provides for as an element of the plan the transfer of the Debtors' insurance or insurance rights to a trust, the issue has been joined in the confirmation hearing. And the Court is properly situated to decide it.

This is in contrast to, again, general coverage issues, i.e., whether any particular claim against the insurance is excluded because of a coverage exclusion, which is not an element that the plan request a determination of or hinges upon and where the plan is clear in the reservation of rights by the insurance -- by the trustees of the trust that will hold the insurance and insurance rights

on the one hand and the insurers on the other.

The insurance-neutral argument that the objecting insurance companies make, therefore, is not grounded on an underlying principle of bankruptcy law but rather only on a due process concern. They contend that as originally filed, the plan was arguably completely insurance neutral and did not seek these types of determinations. However, I believe that the record is clear that the objecting insurers and all other insurers have had sufficient notice for months now that the Debtors were going to seek these limited findings in the confirmation order.

The insurers are extremely well represented, highly sophisticated, as evidenced by the negotiations over the plan provisions relating to them and the proposed confirmation order. And they had a full opportunity to challenge the findings that I've just outlined that are being sought by the Debtors and their allies, the parties that is, who would receive the benefits of the insurance under the plan, namely the creditors.

That notice has really been made to them, at least since May of 2021 and for the statutory and Bankruptcy Rules notice period for the confirmation hearing, as well.

The plan also resolves the remaining due process issue that the insurers had raised which is, as originally drafted, it left open the possibility that additional

findings could be sought or documents could be filed that the insurers would not have notice of and that might nevertheless be bindings on them. The plan has been amended to make it clear that that is not going to happen.

As far as the finding as to the plan's resolution of arguably insured claims by providing for the distribution of 100 percent of the value of the Debtors on account of the claims asserted against them in the form of payments between 700 and $750 million through personal injury trusts and remaining amounts of at least 5 billion to abate the opioid crisis in various forms, it is almost impossible to see how -- in fact, I believe impossible to see how an insurer could claim that its consent rights were somehow violated by notice of the plan and the implementation of it.

As far as the filed claims are concerned, the claims assert roughly $40 trillion excluding a sole $100-trillion claim that was filed by an individual, and that is only roughly 10 percent of the claims, the others asserting unliquidated amounts or unasserted amounts as set forth in the declaration of Jessica B. Horewitz, Ph.D., which is an expert declaration. She calculated that the actual fixed claim of the Department of Justice under the settlement agreement entered into by the Debtors during the course of this case provides for less than a one-percent recovery on the asserted claim.

Under those circumstances, given the wide notice and the absolute lack of any objection to the plan's allocation of value either to opioid victims or to abate the opioid crisis and the fact that insurers' consent rights just like any other contract parties' consent rights are circumscribed by the Bankruptcy Code's own separate notice and hearing process. The Debtors' request for a finding as to applicable consent provisions is justified and appropriate.

In addition, ample case law establishes the authority under Sections 1123(a)(5)(B) and (b)(2) and (6) to transfer as part of a plan and in furtherance of a plan insurance rights and insurance policies to a trust to pay mass claims as exist in this case, the analysis set forth by the Third Circuit in In re Federal–Mogul Global Inc., 684 F.3d 355 (3d. Cir. 2012), I believe cannot be improved on in this context.

I will note that although that was a case driven by asbestos claims, the logic behind the Court's analysis was based on Section 1123(a)(5) and 1141, not Section 524(g) of the Code and, therefore, it would apply here. See also In re W.R. Grace and Company, 475 BR 34, 139 *189 (D. Del. 2012), affirmed 729 F.3d 311 (3d Cir. 2013) and the cases cited therein which show the vast, and I think perhaps unanimous, authority for the finding and conclusion that the

Debtors seek here that notwithstanding any anti-assignment provision and any applicable insurance under the plan, the insurance policies or the insurance coverage rights, or the rights to the proceeds could be assigned to the MDT, the Master Distribution Trust.

I will note that both of these findings are also warranted given that it appears that at least at this point the insurers who have objected have either disclaimed coverage or indicated that they were reserving their rights to do so. See JP Morgan Security Inc. v. Vigilant Insurance Company, 58 NYS 3d. 38 (1st Dep't 2017) and the cases cited therein.

So I will overrule the remaining portions of the insurers' objection to the extent they actually do remain. And I will note that in light of the colloquy during oral argument with the insurers' counsel and counsel handling insurance issues in this case, Reed Smith, it appeared to me that most if not all of the objections actually had been resolved by the changes to the plan that I've already described.

The next objection that I want to address is an objection by the United States Trustee not to the plan settlement and release provisions pertaining to the shareholder release parties, i.e., the Sacklers and their related entities, but rather a separate objection which is

to Section 5.8 of the plan.

The plan provides for compensation of a defined term "professionals" which are estate-retained professionals or professionals such as counsel for Official Committee of Unsecured Creditors who are retained pursuant an order of the Court and paid out of the estate's assets for their post-petition, that is post-bankruptcy filing, work. Two other groups of professionals are also covered by orders of the Court previously entered in the case and will continue to be so with respect to their fees through the effective date or the confirmation date of the plan under those orders, namely the AHC and the multi-state governmental entities group.

Section 5.8 of the plan sets forth the treatment of fee claims for other counsel, not counsel formally retained by and whose retention was approved by an order of the Court or was approved by order of the Court even if retained separately. That section lays out the settlement regarding the payment of these counsel, namely funds from the so-called No Act and Tribal Abatement Fund Trusts for political subdivisions and tribes' counsel.

In addition, it lays out payment of attorneys involved in the pursuit by hospitals of their claims, the so-called NAS monitoring claimant costs, that is the counsel for NAS victims, payment for rate-payer costs and expenses,

payment for personal injury claimants' costs and expenses, payment for the public schools' costs and expenses.

The U.S. Trustee contends that the only way that the plan can provide for such payments is pursuant to Section 503(b)(3) or (4) of the Bankruptcy Code which provides that after notice and a hearing, there should be allowed administrative expenses, that is expenses against the estate for post-petition claims, including the actual necessary expenses comprising reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under (a), (b), (c), (d), or (e) of paragraph 3 based on the time, the nature of the extent, and the value of such services and the cost of comparable services other than the case under this title and reimbursement of actual necessary expenses incurred by such attorney or accountant.

That section takes you back to Section 503(b)(3) which requires that a creditor show that it made a "substantial contribution in a case under Chapter 11 of the Bankruptcy Code." This contention by the U.S. Trustee is wrong in two critical respects. First, the bulk of the fees that it is objecting to are not for post-petition work but rather for pre-petition work in bringing and pursuing claims against Purdue and to some extent the Sacklers before the commencement of the bankruptcy case including in the multi-

district litigation that was pending before the start of the case.

Unsecured creditors' claims for collection of costs including attorneys' fees are based in contract ultimately as well as rights under applicable non-bankruptcy law and enforceable in bankruptcy without the necessity to comply with Section 503(b)(3) and (4) which applies only to post-petition services or services leading up to a plan if one seeks an administrative expense. See In re United Merchants and Manufacturers, Inc., 674 F.2d 134, 138 (2d Cir. 1982).

The U.S. Trustee is wrong on this point also because the remaining fees to be sought again are not being sought as an administrative expense but rather as part of a highly-negotiated compromise of those fees and their clients' obligation to pay those fees reached during the mediation in this case conducted by Messrs. Feinberg and Phillips.

The settlements laid out in Section 5.8 that resulted from that mediation are subject to court review both under Bankruptcy Rule 9019 and I believe, although there are arguments to the contrary, under Section 1129(a)(4) of the Bankruptcy Code, which I previously read, and have been so recognized in this district. See In re Sterns Holding LLC, 607 BR 781, 793 (Bankr. SDNY 2019) and

In re Sabine Oil & Gas Corp., 555 BR 180, 258 (Bankr. SDNY 2016).

The U.S. Trustee relies upon a case that is eminently distinguishable, In re Lehman Brothers, Inc., 508 BR 283 (SDNY 2014). In that case, the district court noted that Congress had specifically precluded recovery by creditors' committee members of their post-bankruptcy fees and expenses. Therefore, any settlement of those expenses would be improper as controverted by that provision. See. In contrast, In re AMR Corp. 497 BR 690, 695 (Bankr. SDNY 2013).

The mediator's report has made it clear and there is unrefuted testimony in the record in addition to the mediator's report on the docket by Gary A. Gotto, Peter Weinberger, and Jayne Conroy as to, not only the reasonableness of the contingency fees provided for in Section 5.8, again, almost all of which were pre-petition or for services rendered pre-petition but also the significant compromise of those fees as set forth in Section 5.8 compromising down from a range of generally 20 to 40 percent to the ranges set forth in Section 5.8.

As stated in the mediator's report, the contingency fee resolutions as well as the common benefit assessments reached in this mediation are consistent with fee awards or arrangements of assessments agreed upon in

other similar mass-tort situations. See also the declaration of AG Guard at paragraphs 57 through 60, 73, and 77 through 78; the Weinberger declaration at paragraphs 20 through 27 and 31 through 32; and the Conroy declaration at 11 through 15.

I do believe given Congress's concern that the court be the ultimate say on the reasonableness of attorneys' fees paid through a Chapter 11 plan, albeit that here they're not being paid by the Debtor but rather they're being paid by the clients and the trusts that the clients have agreed to set up as part of the clients' recovery. Congress did that, however, in Section 1129(a)(4), not 503(b)(3) and (4), which requires only that the fees be founds to be reasonable.

That inquiry should not be turned into a mandate for an expensive or unnecessary review. In re Journal Register Company, 407 BR 520, 537-538 (Bankr. SDNY 2009) quoting maybe the Southwestern Electric Power Company (In re Cajun Electric Power Co-op Inc., 150 F.3d 503, 517 (5th Cir. 1998) based upon the uncontested representations. And I note that the U.S. Trustee has made absolutely no effort whatsoever to contest them but, nevertheless, somehow contended that the fees were improper in the Guard-Conroy-Weinberger declarations and the mediator's report.

I find that the contingency fees provided for in

the plan paragraph 5.08 and the mechanism for allocating them among counsel are reasonable and, in fact, to the benefit of the estate by a reduction of the attorneys' claims. Sometimes being a watchdog that has no regulatory power requires backing off when the facts show that a provision is reasonable and for the benefit of the estate, not its detriment. This is one of those instances.

There are two sets of fees that I cannot on this record make a reasonableness finding on. I noted them during oral argument on this issue. They are fees that are based on not contingencies that the parties have analyzed, contingency fee mechanisms, that is, that the parties have analyzed and the mediators have analyzed and that I have analyzed and that have not been controverted but rather on hourly rates. I have not seen any time records as to the amount of time spent or the rates, and so I believe I need to make a reasonableness finding as to those counsel which are the counsel to the PI Ad Hoc Committee and the School Districts Committee.

The plan has been amended to reflect that opinion that voiced during oral argument with one wrinkle. It contemplated or it reflects that one portion of the school districts' claim may actually be a contingency fee claim. And it suggests that the Court will not review it if it is determined by one of the mediators, Mr. Feinberg, to be

reasonable. I'm not prepared to accept that mechanism. I will certainly take into account as I have with regard to the other contingency fee compromises that are set forth in paragraph 5.8 Mr. Feinberg's views, but I believe I ultimately have to make the reasonableness determination on notice to parties in interest including the U.S. Trustee.

I recognize that this is a compromise or that the contingency fee amount is a compromise. But given that I don't have evidence in this record to show that it was a reasonable compromise, I need to under Section 1129(a)(4) have the last say on it.

But I want to be clear that is a say that I will exercise based on my review of the reasonableness of contingency fee taking into account the evidence presented before me which I anticipate will be some statement by Mr. Feinberg and any other statement that would support that level of contingency fee. So the U.S. Trustee's objection on this point is overruled.

And just to be clear, because insinuations really shouldn't go unanswered, there is absolutely no evidence for any insinuation in the U.S. Trustee's filings that the fees provided for in paragraph 5.8 are somehow improper. In fact, to the contrary, they are settlements of claims that could be substantially higher and were settled as part of a mediation resolving the allocation of claims between public

and private creditors and the amount that creditors were willing to accept coming from the Sacklers. The record is crystal clear on that. Again, the settlements are to the benefit of the creditors, not their detriment.

The next objections are by individuals, Creighton Bloyd, Stacey Bridges, and Charles Fitch in their individual capacities. They object contending that there was insufficient notice of the bar date to those incarcerated in prison, notwithstanding as I had noted above or earlier the extensive notice as testified to by Ms. Finegan.

There's a fundamental problem with this objection. All three of the objectors have actually filed a proof of claim timely, i.e., before the bar date. They, therefore, lack standing under Article III of the Constitution, and this Court lacks the power to decide their objection because as to them, and again, they're proceeding in their individual capacity, there is no remedy that the Court can grant. Again, they have filed timely proofs of claim in this case.

As recently stated by the Supreme Court in TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2202-2203 (2021), to have standing and for there to be a case in controversy, the party raising a matter with the federal court must have a personal stake in fact and if they don't, there is no case or controversy which precludes

determination of the objection under Article III of the Constitution.

See also Kane v. Johns Manville, Corp., 843 F.3d 636, 642-646 (2d.Cir 1988) which dealt with almost the same issue.

Mr. Bloyd also filed a second individual objection based on what he believes might be the consequences of the Debtors' criminal plea in their 2021 settlement with the Department of Justice. Mr. Bloyd's counsel acknowledged at oral argument that this issue is properly raised not here but at the Debtors' sentencing before the New Jersey District Court in which it can be argued that persons such as Mr. Bloyd might have an individual right to the proceeds to be paid by the Debtors under the DOJ settlement.

Even if that wasn't conceded, I rule that that issue is not a plan confirmation issue but rather an issue as to the allocation of the DOJ payment after the Debtor makes it. I don't believe it affects the feasibility of the plan. Moreover, based on my review of the discretion that the District Court would have under the applicable act that Mr. Bloyd is going to rely on where there is such a large number of potential victims for which the DOJ could be said to be acting, individual rights in a restitution fund can be foregone.

There's arguably a suggestion by Mr. Bloyd that

somehow the Debtors and the Department of Justice colluded in agreeing to the settlement agreement and, therefore -- in that they did not provide for individual rights of restitution from the payments or the rights of the DOJ under the settlement agreement. This is not supported by the record.

The Debtors have established that, as far as the plan's treatment of the Department of Justice, the plan has been proposed in good faith under Section 1129(a)(3). There's no evidence of any attempt to improperly cut off rights that individual victims would have under the DOJ settlement and, indeed, the personal injury class was actively and well represented in the mediations in this case which came up with the funding of the personal injury trusts.

It's well established in the Second Circuit, including in the Drexel case that I'll be citing in a moment, that the fact that some creditors did not participate in a mediation does not render the results of a mediation improper or not in good faith. The extent of the vote of the personal injury class, 97 percent in favor of the plan, also argues for the good faith treatment of the personal injury creditors here vis-à-vis the DOJ settlement.

And again, I've noted the flexibility in the settlement and the applicable statute that would govern

restitution rights, which of course, the district court in New Jersey will consider at the appropriate time.

So I will overrule Mr. Bloyd's second objection to the plan.

I had mentioned earlier that certain Canadian Municipalities and First Nations had filed an objection to the plan. I've reviewed the proofs of claim that they have filed in these cases against these Debtors. It is not clear from those claims, which essentially attach complaints against both non-debtor Purdue Canada and other non-debtors and these Debtors, whether the claims really are against the Debtors.

To the extent they are against Purdue Canada or other foreign non-debtors, those recoveries are fully preserved. They're not affected by the plan and claims against third-parties, including the Sacklers related to those types of claims, as opposed to claims against these Debtors, are not enjoined.

The gist of the objection is that rather than be treated as general unsecured creditors in Class 11, the Canadian Municipalities and First Nation objectors must be classified with the U.S. Public and Native American Tribes in Classes 4 and 5 respectively and participate in the abatement trusts created under the plan for those creditors.

It should be noted that these objectors have made

no contention that the value to be paid to them as a Class 11 creditor is unfairly different than the value to them if they participated in the NOAT and Native American Tribes Abatement Trusts. But in any event, it is conceded by these objectors that if their vote were counted in Class 11, as opposed to in Classes 4 and 5, Class 11 would still have overwhelmingly accepted the plan.

Thus, the provision is Section 1129(b)'s cramdown requirement that there be no unfair discrimination among similarly situated creditors in different classes does not apply. Instead, the objection is, if at all, properly couched under different provisions of the Bankruptcy Code.

I will note that there was some suggestion during oral argument and one sentence in the objection that stated that the claims of the Canadian Municipalities and First Nations should not be allowed for voting purposes at $1.00, as provided for in the Court's confirmation/disclosure statement order. However, there's been no request to estimate these claims for voting purposes under Section 502(c) of the Bankruptcy Code or Rule 3018.

And further, such treatment, i.e., temporary allowance for what would otherwise be a disputed and unliquidated claim arguably not even against these Debtors for mass tort liability, is well recognized as being fair -- see the discussion in In re Lloyd E. Mitchell, Inc., 373

B.R. 416, 428 (Bankr. D. Md. 2007) and the cases cited therein -- given the vast number of claims asserted that are unliquidated like these and subject to dispute. To subject the process to fixing the amounts of such claims would defeat the whole conduct of the bankruptcy case.

Given that Section 1129(b) doesn't apply to this issue because of the class vote, the issue is whether the plan's separate classification of these objecting creditors in Class 11, as opposed to the class that they want to be in, is proper.

Separate classification of similar claims is a right that a plan proponent has under the Bankruptcy Code if there's a reasonable basis to classify the claims separately. See generally 7 Collier on Bankruptcy, Paragraph 1122.03[1][c] 16th Edition 2021; In re Lightsquared, Inc., 513 B.R. 56, 83 (Bankr. S.D.N.Y. 2014), and In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992).

Section 1122 of the Bankruptcy Code, which again is incorporated into Section 1129(a)(1) states nearly that notwithstanding any otherwise applicable non-bankruptcy law, the plan shall -- I'm sorry, I'm focusing on Section 1129 -- designate, subject to Section 1122 of this title, classes of claims.

Section 1122 says, except as provided in

subsection (b) of this section, which is inapplicable here, a plan may place a claim -- that is may place a claim -- in a particular class only if such claim or interest is substantially similar to other claims or interests in such class. It doesn't require all substantially similar claims to be placed in the same class, only that if you are putting claims in a class, they need to be substantially similar.

Here, there is clearly a rational basis for separately classifying these objectors' claims from the U.S. public creditors and Native American Tribes, based upon the different regulatory regimes that the objectors operate under with regard to opioids and abatement, as well as the fact that the allocation mediation, which I'll be discussing at length later, which allocated the Debtors' assets and third-party claim assets among private and public claimants and then separately among the public claimants involved U.S. public claimants and their own regulatory interests and features.

The record reflects that there was no request by any of the objecting creditors to participate in that mediation. The record is also clear, and I can take judicial notice of the fact as well, that those who did request to participate in the mediation, if they had a reasonable basis to do so, were generally invited into the mediation, including for example, the NAACP.

The failure to participate in mediation is not something that should detract from the settlement reached, as long as the classification scheme is fair and rational. See In re Peabody Energy Corp., 933 F.3d 918, 927-8 (8th Cir. 2019).

Such a distinction between U.S. and Canadian claimants has been recognized by the Third Circuit and the Sixth Circuit. See Class 5 Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 648, 942 (6th Cir. 2012). See also, In re W.R. Grace & Co., 729 F.3d 311, 329-30 (2013), where Canadian property damage claims, including a claim by the Queen on behalf of Canada, was found to be properly separately classified because of the different types of recovery such claims would have under applicable law, a close analogy to the different regulatory schemes that would apply here to the NOAT Trust.

Again, there was a suggestion that the separate classification was also not in good faith, asserting basically the same argument that because the Canadian Municipalities and First Nations didn't have the same treatment and classification as the U.S. governmental entities and Native American Tribes, the plan was not in good faith or proposed in good faith.

But given the plan's rational basis for separate classification and the lack of any evidence to show that the

objecting creditors were improperly silenced or excluded from negotiations, I find that the plan is proposed in good faith as to them.

Besides raising the foregoing objections, the Canadian creditors object to the plan's release of third-party claims against the Sackler shareholder released parties. To the extent they make the same arguments as others do who raised this point, I will address them collectively later.

In addition, however, the Canadian objectors have contended that because no money from the shareholder settlement is being specifically channeled to Class 11, Class 11 creditors should not be enjoined under the plan from pursuing whatever claims they have against the Sacklers or the Sackler released parties based on their U.S. conduct. Is this a valid basis for the plan objection?

Here, I conclude that it is as, at least by the Canadian creditors, the uncontested best interest liquidation analysis in the DelConte declaration shows Class 11 creditors would receive no recovery on their claims if, as I believe is the case, upon their carveout from the third-party release provisions, the Debtors would liquidate the Sackler settlement, in other words, enables the Class 11 recovery to exist. It is necessary for and inextricably tied to the plan and fair to the Canadian objectors,

therefore, to bind them to the release provisions in the plan.

I will note in this regard that there's been no indication in any claim by the Class 11 creditors that the Sacklers would be liable to them based on their conduct related to the U.S. Debtors. Indeed, as noted, there's really little indication that there's any claim against the U.S. Debtors in the first place.

It is clear to me from the liquidation analysis and the record of this case, therefore, that the payment to the class of unsecured creditors, that is Class 11 in which these objectors reside, is fair taking into account not only their rights against the Debtors, but also whatever rights they may have against the Sacklers that would be released under the plan, and, in fact, that they would not recover if they were carved out from the release, so I will overrule that objection.

Certain of the objecting states and the District of Columbia have raised another objection to confirmation than their objection to the third-party claims release and injunction in the plan. They have asserted, first, that the plan violates Section 1122 of the Bankruptcy Code by classifying them in Class 4 with their political subdivisions.

Given that classification, if one simply goes by a

creditor term by creditor vote in that class, the objecting states and District of Columbia have a tiny percentage of the no vote, compared to an enormous percentage of the yes vote. They obviously do not like being portrayed that way, and I do view them as representing their state as a whole, that is the people in that state.

I do not accept, however, their blanket characterization that because they are states, the other public creditors, political subdivisions, municipalities and the like that are in their class, can be silenced. I accept that for most states that is not the case. More importantly, states have political subdivisions that is because of home rule laws and the like.

More importantly, there has been no attempt by the objecting states and the District of Columbia to silence the other members of their class by seeking to disallow their vote or designate their vote under Section 1126 of the Bankruptcy Code. And in any event, it is a position taken only as to some political subdivisions' claims as being precluded by the parens patriae rights of a state, as opposed to all of them.

Importantly, the states acknowledge -- and this was stated on the record by their counsel -- their claims have the same rights to the Debtors' assets as other general unsecured creditors, including the political subdivisions

that are in their class. That is, the states' claims are not priority claims, they're not secured claims; they're general unsecured claims.

The law is clear that under those circumstances, the states' claims are, in fact, properly classified under Section 1122(a), as I previously read, with the other claims in their class. As noted by the Third Circuit in In re W.R. Grace & Co., 729 F.3d 311, 326 (3d Circ. 2013), to determine whether claims are substantially similar for purposes of Section 1122(a), "The proper focus is on the legal character of the claim as it relates to the assets of the debtor." In re AOV Industries, Inc., 792 F.2d, 1140, 1150, (DC Cir. 1986). See also, In re Tribune Company, 476 B.R. 843, 855 (Bankr. D. Del 2021), (concluding that the phrase substantially similar reflects, "The legal attributes of the claims, not who holds them), and In re Quigley, 377 B.R. 110, 116 (Bank. S.D.N.Y. 2007), "Claims are similar if they have substantially similar rights to the Debtors' assets." See also, In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) and 7 Collier on Bankruptcy, Paragraph 1122.03[3] 16th Edition 2021.

That is clearly the case here and, therefore, the claims can in fact and should in fact properly be classed together, which has resulted in the unanimous agreement by all of the states, including these objecting states as to

the allocation within the class among them and the other public creditors that was reached during the lengthy and difficult mediation conducted by Messrs. Phillips and Feinberg.

It also should be noted, although ultimately this has little bearing on the classification issue, only bearing on the plan release issue, that if the plan had separately classified the states, although again that would have unduly complicated the universally agreed public side allocation of value as between the states on the one hand and all of the other public entities on the other in Class 4, the accepting states, the states accepting the plan, and the territories would go from 95 percent as far as Class 4 is concerned to 80 percent or slightly below 80 percent, in each case, well above the 75 percent supermajority threshold in the analogous section of the Bankruptcy Code 524(g).

The objecting states and District of Columbia also have referenced the alleged impropriety of classifying their claims as well as all other opioid-related claims, none of which have been liquidated to a dollar amount and most of which never will be liquidated to a dollar amount, none of which at least by the public entities will be because of the plan and the agreement by all of the states in the plan to use the money to abate opioids as opposed to paying them cash. They nevertheless contend that their claims should

not have been allowed for voting purposes at $1.00.

This objection should be denied for the same reason that I denied the same argument made by the Canadian Municipalities and First Nations: there's been no effort by any of these objectors to seek to temporarily allow their claims for voting purposes. There's an obvious reason for that.

If that request had been made, every entity that wanted to vote would have made the same request and we would have been engaged in, I believe, literally years of litigation over liquidating the claims, which these entities themselves by their own choice as part of a mediation have agreed needn't be done because the money will go to opioid abatement instead of into their individual treasuries.

Under those circumstances, it's perfectly appropriate to allow the claims for voting purposes for $1.00. Again, it's the In re Lloyd E. Mitchell, Inc., 373 B.R. at 428.

The same objecting states also argue that they are being treated unequally with the United States, which is in large measure carved out of the third-party release in the plan. This, however, is not a proper objection under Section 1124 -- excuse me -- 1123(a)(4), which says that a plan shall provide the same treatment for each claim or interest of a particular class unless the holder of a claim

or interest agrees to a less favorable treatment because they're not in the same class; they're in different classes, and as I noted earlier, a plan proponent can separately classify similar claims in different classes if there's a rational basis to do so.

There clearly is a rational basis to classify the U.S. differently here. The U.S. has different types of claims. It actually has secured claims, which are treated as part of one of the aspects of the plan settlement, and it's unsecured claims are different in particular with respect to the Sacklers. Unlike the claimants in Class 4, where the objecting states and the District of Columbia are classified, the United States has settled its civil claims with the Sacklers for a specific payment.

So clearly, the different rights of the United States and different treatment of the United States, which include as another part of the plan settlement, the waiver of $1.7 billion of its super-priority administrative expense claim, which otherwise would be entitled to be paid ahead of any unsecured claim and any administrative expense claim under the abatement and NewCo provisions of the plan, which is for the benefit of Class 4 and Class 5 and, frankly, all of the creditors of the estate.

So those different rights and different treatment clearly support separation classification, without a doubt,

nor is any unfair discrimination argument available under Section 1129(b), the cramdown provision, because the class has accepted the plan and, therefore, the cramdown provisions don't apply.

The State of West Virginia has filed a limited objection to the plan. It does not object to any aspect of the plan other than the allocation in Class 4 and the NOAT procedures of its share of the funds to be used in the NOAT Trust to abate the opioid epidemic. It raises this objection in two legal contexts. First, it contends that the plan is not being proposed in good faith because what it contends is the unfair allocations of the NOAT Trust.

Under Section 1129(a)(3) of the Bankruptcy Code, the Court shall confirm a plan only if the plan proponent shows that it has, "Has been proposed in good faith and not by any means forbidden by law." The courts have fairly general consensus as to the meaning of proposed in good faith in this provision.

All courts recognize a procedural interpretation; that is they look only to the proposal of the plan, not the terms of the plan, to see if the proposal itself was in good faith or, to the contrary, infected with improper conflicts of interest or self-dealing or the like. See, for example, Garvin v. Cook Investments NW, SPNWY, LLC, 922 1031, 1035 (9th Cir. 2019).

As the Circuit Court noted there, a contrary interpretation that has a broader inquiry into general principles of good faith not only renders the words has been proposed meaningless, but makes other provisions of Section 1129(a), which are specific and shouldn't be diluted by a good faith analysis, redundant. See 7 Collier on Bankruptcy, Paragraph 1129.02[3][a] 16th Edition 2021.

In addition to that view, however, other courts apply more of a totality of the circumstances analysis beyond the manner in which a plan is proposed and find that a plan is proposed in good faith if there is a reasonable likelihood that a plan will achieve a result consistent with the standards prescribed under the Code, that is the Bankruptcy Code. In re Peabody Energy Corp., 923 F.3d 918, 927 (8th Cir. 2019).

Generally, the Second Circuit has clearly followed the first line, just focusing on the proposal of the plan. See In re Board of Directors of Telecom Argentina, S.A., 528 F.3d 162, 174 (2d Cir. 2008) and Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1998), and In re Koelbl 751 F.2d 137, 139 (2d Cir. 1984).

On the other hand, courts in this district have, at times, followed a more expansive view, more of a totality of the circumstances surrounding the establishment of the plan and the like. Although even there, they focused

largely on the proposal of the plan and the process of plan development. See In re Chemtura Corp., 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010), In re Quigley Co., Inc., 437 B.R. 102, 125 (Bankr. S.D.N.Y. 2010), In re Genco Shipping & Trading Limited, 513 B.R. 233, 261 (Bankr. S.D.N.Y.), and In re Breitburn Energy Partners LP, 582 B.R. 321, 352 (Bankr. S.D.N.Y. 2018).

However, courts in this district also have considered whether the plan, "... will achieve a result consistent with the standards prescribed under the Bankruptcy Code." See In re Ditech Holding Corp., 606 B.R. 544, 578 (Bankr. S.D.N.Y. 2019) and the cases cited therein. And as recognized by Judge Garrity in that case, those policies or objectives include preserving going concerns and maximizing property available to satisfy creditors, giving debtors a fresh start in life, discouraging debtor misconduct, the expeditious liquidation of distribution of the bankruptcy estate to its creditors and achieving fundamental fairness and justice. Id.

Here, I have ample testimony by John Guard primarily and the representative of the State of Florida, that the allocation of the NOAT was the result of good faith arms' length negotiations by the various states during the mediation process. That testimony really is unassailable as to good faith. It is also clear that without no

negotiations, which were difficult given the nature of the states, not as weighty of course, but equally reflecting concerns underlying the compromise behind the constitution; you have small states, you have large states, you have states that have been disproportionately affected by the opioid crisis, et cetera.

Without that agreement, the goals of the Bankruptcy Code would actually have been jeopardized that agreement, which in fact, the State of Washington recognizes being remarkable, and I too believe is remarkable to get 48 states to agree upon an allocation mechanism for abatement procedures.

The failure to do so would have resulted in extensive litigation and arguably a fallback on distributing the value of the Debtors' estates, including their claims against the Sacklers and channeled third-party contributions or payments by the Sackler shareholder release parties, not to serve abatement purpose, but rather after extensive litigation cash payments, which I believe would be substantially reduced by the extensive litigation, to individual states for their general use in their treasuries in large part.

So I find that the NOAT allocation was, in fact, derived in good faith by arms' length and fair negotiations among the parties.

That testimony by Mr. Guard is highlighted or the cogency of that testimony is highlighted or was highlighted by the cross-examination of West Virginia's expert, Dr. Charles Cowan. He acknowledged his prior publications, that is publications written prior to his being retained by the State of West Virginia for the purpose of showing why West Virginia should receive a larger allocation of the NOAT under the plan. He recognized in those publications that other methods of allocating money towards abatement could be fair and reasonable as well, and that there was no specific formula for allocating states' recoveries to them.

It was clear from Mr. Guard's testimony that the proposal made by Mr. Cowan would not have been agreed to by any state other than West Virginia. It also is clear that that proposal or that methodology would have resulted in peculiar allocations of the NOAT Trust money for abatement; whereby, for example, states with substantially smaller populations, like Kentucky, would get substantially more of the funds than states with large populations like New York, or Washington would get a larger recovery than Texas, or West Virginia would get a larger recovery than Virginia, albeit that they're neighboring states.

And albeit that although certain states like Kentucky, like West Virginia are, in fact, ground zero in the opioid crisis, it is a national problem that requires

the exercise of extensive resources by every state where population is a legitimate measure, as well as the other factors taken into account in the NOAT allocation.

That allocation does, in certain ways, respect the rights of smaller states and take into account levels of intensity of harm. However, it also recognizes that the states report in some ways measures of intensity differently and, therefore, those measures are not necessarily accurate. For example, the evidence reflects that different states and their subdivisions report deaths from opioids differently than others, or record opioid disorders differently.

Given that, I conclude that the treatment of the states in Class 4, and through it by means of the trust procedures and allocations for the NOAT, are being treated substantially the same pursuant to an overall regime that has been negotiated at arms' length.

As discussed again by the Third Circuit in the W.R. Grace & Co. case that I previously cited, "Although neither the code nor the legislative history precisely defines the standards of equal treatment, courts have interpreted the 'same treatment requirement' to mean that all claimants in a class must have 'the same opportunity for recovery.'" See, for example, In re Breitburn Energy Partners, LP, 582 B.R. 358, 321 (Bankr. S.D.N.Y. 2018) and In re Dana Corp., 412 B.R. 5362 (S.D.N.Y. 2008).

The W.R. Grace court then goes on to state or to cite In re Central Medical Center, Inc., 122 B.R. 568, 575 (Bankr. E.D. Mo. 1990), which concludes that a plan that subjects all members of the same class to the same process for claim payment is sufficient to satisfy the requirements of Section 1123(a)(4).

Finally, as the W.R. Grace court states, what matters then is not that claimants recover the same amount or that they have equal opportunity to recover on their claims; that's at 729 F.3d 327.

The court goes on to state, courts are also in agreement that Section 1123(a)(4), "... does not require precise equality, only approximately equality," citing In re Quigley Company, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007). See also In re Multiut Corp., 449 B.R. 334 (Bankr. N.D. Illinois, 2011).

It went on to find that -- that is the W.R. Grace case -- found that the consequences of how and when the class members would be paid didn't produce a substantive difference in a claimant's opportunity to recover and were the result of, among other things, a comprehensive mediation and arms' length negotiations.

I conclude the same here with regard to West Virginia's 1129(a)(4) arguments. I was not going to conclude the same as to another aspect of its argument. One

of the adjustments made for the benefit of states with smaller populations like West Virginia in the NOAT procedures was a separate fund, so-called 1 percent fund, which all the states, other than the small states that would participate in the fund, were going to participate in, with the exception of California.

I did not see sufficient evidence on the record to justify California's being excepted from that contribution obligation, if you will, to the 1 percent fund. However, California has agreed, since the discussion on the record during the confirmation hearing, to change its view and to participate in the 1 percent fund. Therefore, the one aspect of West Virginia's objection that I was going to grant has effectively been granted by the agreement of California that I've just described.

Mr. Guest made it clear that all of the states recognized the huge impact that the opioid crisis has had on states like West Virginia and had tried to take that into account in negotiating the NOAT allocation. I too recognize that impact, but I believe that given the arms' length nature of the negotiation and the acceptable range of West Virginia's treatment even within the writings acknowledged by Professor Cowan, I conclude that its objection under Section 1129(a)(4) should be denied.

The remaining objections to the plan, other than

the objections based upon the plan's third-party release and injunction provisions and the plan settlement with the Sacklers and their related entities, have been asserted by a number of pro se parties, that is parties who were not represented by counsel.

I will go through these, which I believe are properly viewed in roughly four different categories. First, Ms. Butler Frank, Ms. Villeneuve, Mr. Cobb, and Mr. Wright have all stated in one form or another that the plan should not give the Sackler family, "... immunity from criminal charges." I completely agree, as does the plan. The plan does not provide a release of criminal conduct. That is crystal clear in the plan and always has been.

It is I think understandable that a person who is not a lawyer and looks at this case from afar through one form of the media or other may have reached a different conclusion; in part, that is because either through ignorance or choice, the plan has been described as providing "immunity" to the Sacklers. Immunity suggests clearly immunity from criminal charges; that's how one generally thinks of the word immunity. It simply does not do that. It couldn't do it and it doesn't.

It's important for those who should now know better, whether they are reporters, law professors, or members of congress, to be careful how they use their words

in this context. At a minimum, it reflects that they do not understand this case. It also, if they really do know better, is irresponsible and, frankly, also cruel to those whom they mislead.

If anyone that is obtaining a civil release under this plan has engaged in criminal activity, either before or during this case, they are not relieved of the consequences of that. If any prosecutor wants to pursue such a claim against the release parties, they can.

Ms. Graham, Mr. Normile, Mr. Beois (ph), I hope I'm pronouncing that right, Ms. Willis, Ms. Ecke, Mr. West, and Ms. Farash have all in one form or another contended that it is improper or unfair for the plan to provide only the $700 to $750 million for individual personal injury claimants, while the bulk of the recovery goes to, as one of the objectors stated, wealthy states, hospitals, school districts, ratepayers, et cetera.

I have said more than once during this case, including to Ms. Ecke who testified during the confirmation hearing, that one cannot put a price on a human life or an injury such as opioid addiction, and yet, that's what courts do with respect to personal injuries. They take into account a number of factors, which are relevant legally, including potential defenses or dilution of the claim and causation. The amount that courts reach is rarely, in terms

of dollars, sufficient compensation. That is particularly the case where the wrongdoer is insolvent.

I did not have any specific valuation of personal injury claims in this case. What I do have is a lengthy and difficult arms' length mediation, led by two of the best mediators not only in the United States but in the world, Messrs. Feinberg and Phillips. They are, I believe, in no way beholden to any type of claimant here or sympathetic unduly or disproportionately to any type of claimant here.

Mr. Feinberg, for example, has the incredibly difficult job of working out by dealing with victims and their families the proper allocation of the 9/11 fund. Both of them have dealt with personal injury claims extensively, and I believe the reason they do that is because they are as sympathetic, if not more so, to individual victims as they are to states, hospitals, and other entities.

The people representing the personal injury claimants in that mediation were some of the most effective personal injury lawyers, again, in the world, and by effective, I include within that category aggressive. I believe that, as set forth in the mediators' report, their negotiations were at arms' length and in good faith.

I also recognize from the declaration by Jayne Conroy, who is one of those personal injury lawyers and, in fact, with her colleagues probably the main lawyer to, over

the last more than decade, pursue Purdue and the Sacklers on behalf of personal injury claimants. Because of that dogged pursuit, she obtained a settlement for her clients, roughly 1,100 personal injury claimants, albeit many years ago.

She described them in her declaration as those who could tie their injury to a prescription, and I took away from it probably the holders who had the most likely chance in a litigation of obtaining a recovery, notwithstanding all of the arguments that the defendants would throw back at them.

After deducting a reasonable contingency fee from that settlement, I believe on average the recovery -- and I don't know how the recovery was divided, but just doing the math from the aggregate amount minus a reasonable contingency fee -- was approximately $13,500 per person.

I have the declarations of Deborah Greenspan, Peter Weinberger, Gary Gotto, and Ms. Conroy all laying out what they believe was the hard-fought litigation process and negotiation process for the settlement embodied in the plan for personal injury claimants.

Ms. Greenspan also details the procedures under the personal injury trust for efficiently, but consistent with the burden to show a claim, to fix the amount of personal injury claims and obtain a distribution. Her declaration was uncontroverted and is eloquent in describing

a trust procedure mechanism that minimizes the difficulty and cost of presenting a claim for personal injury, while maintaining a sufficient degree of rigor over the burden of proof to ensure as much of that money can go directly to personal injury creditors instead of further to lawyers.

I also have the declaration of Michael Atkinson on behalf of the Official Unsecured Creditors' Committee, which attaches the committee's letter in support of the plan and recognizes the committees role in balancing the interests of personal injury creditors with the states that also assert claims, and strongly supports confirmation of the plan as a balance of those interests.

The plan vote, which was approximately 97 percent of the personal injury class in favor of the plan, strongly argues that the members of that class support the plan and the fairness, albeit only in this setting where one allocates money from a limited pot based not on a non-legal view of the value of a human life or a person's health, but based upon the likelihood of such claims recovering in a contested setting and a, I believe, successful resolution of that under the plan that provides for early monies out to personal injury creditors ahead of the states and fair procedures that make it relatively easy, though preserving the burden of proof, to obtain a recovery.

The next set of objections were raised by Ms.

McGaha, who also was a witness at confirmation, and Ms. VomSaal. Both of these people have very legitimate concerns, as do all of the objectors, although as I said before, I believe the first group of objectors have been misled into thinking that the plan provides for release of any criminal conduct.

Ms. McGaha and Ms. VomSaal question why NewCo under the plan will continue to sell opioids in any form. Ms. McGaha also recommends certain measures that could be viewed as abatement measures, such as different disclosures regarding long-term opioids or the banning of long-term opioids, changes in packaging and the like.

I believe strongly that every constituency in this case that has had a say on this issue has wanted to ensure that the lawful production and sale of this dangerous product be not only lawful, but conducted in a way that is cautious, subject to layers of oversight, and informed by the public interest at every step. That is the purpose of the provisions of the plan dealing with NewCo. The NewCo governance covenants, the NewCo monitor, the NewCo operating agreement and the NewCo operating injunction. All of these things, from the start of this case, were a primary focus of the Official Unsecured Creditors Committee, which is composed of victims only. There are no financial creditors in this case. The Committee consists entirely of victims.

They have also been a focus, since the start of this case, of all of the states and political subdivisions, and I believe soon after the start of this case, of the other institutional creditors like hospitals.

The Debtors have not, since before the start of this case, had the Sacklers play any role whatsoever in their management. And so the Debtors, too, have been focused and volunteered, at the start of this case, an injunction pertaining to their sale legally of these products.

Those measures are described in Mr. Lowne's declaration as well as the fact declaration of Mr. DelConte. They were also discussed in the Michael Atkinson declaration and the attached letter from the Creditors Committee, and they are reflected again in the provisions of the plan that I've just described.

The Bankruptcy Code does not require this but, in keeping with the broad determination of 1129(a)(3) good faith requirement, the parties in interest in this case have required it, and I have encouraged them to do so. So that at this point, I believe that the measures that I have just described will set a standard not only for this company but for other companies that manufacture and distribution these products which are legal yet dangerous.

With these well-thought out provisions, it is hard

to imagine how any other company that engaged in this business or in the distribution of these products wouldn't also believe that it was not only the right thing to do but also in their interest to imitate them. They're not being imposed by a government; they're being imposed by this plan with the input of state governments and the federal government and, again, not only should serve as a model but a warning to similar companies to take extra care than is required by the FDA or Congress or state law or be held up against this model in the future and be found lacking if they did not at least take the level of care set forth in this model of governance.

The abatement programs themselves are the subject of substantial, again, unrebutted testimony, including by Gautam Gowrisankaran, Dr. Rahul Gupta, as well as, as far as the distribution procedures and abatement activities, William Legier and Gayle Galan and, of course, the abatement initiatives have the heavy input of the states and non-state governmental entities. To have reached agreement on these abatement metrics and mechanisms, again, is an incredible achievement given the strong views that various parties have as to what is proper as far as abatement is concerned.

Mr. Gowrisankaran's testimony, again, is unrefuted and I believe cogent that there is a clear multiplier effect of dedicating the bulk of the Debtor's value, including

their recovery from the Sackler, to abatement programs as opposed to individual payments to be used perhaps for abatement but not necessarily so.

The foregoing testimony also shows, as do the abatement metrics, that the plan sets forth abatement metrics and procedures that take into account developments over time and learning over time as to what works and what doesn't. Indeed, they encourage that learning because one feature of the plan is the requirement for periodic reports as to the use of the funds for abatement, which can then be checked to see what works and what doesn't, and what can be reallocated to what works.

The abatement procedures and metrics also include a consultative process that takes into account the views of communities and those within the community in a reasonable and fair way.

The objections that I just described really don't lay out, and I didn't expect them to lay out because, again, they're pro se objectors, a legal basis for the objection. I believe, though, that the proper prism within which to analyze the objection legally is, again, the good faith test under 1129(a)(3).

Given all that I've just described, it is very clear to me that the use of the bulk of the Debtors' value for abatement purposes is clearly in good faith and, in

fact, highly beneficial to those who have individual claims against the Debtors as well as the communities and states that also have claims.

It is also clear to me that those procedures, both for abatement and for the governance of NewCo, are facilitating not only the purposes of the Bankruptcy Code, but the broader good. To suggest otherwise, to suggest that somehow this was an ill-cooked and cooked in secret stew, which I don't believe the two objectors are contending but it has been suggested publicly by those who I don't think have been following this case, or if they have, should know better, is simply incorrect and dramatically so.

What this plan does within the constraints of federal law, including the regulations and guidance from the FDA is go beyond that law where that can be done to ensure, A, the safety or the safe use of the Debtors' products, including the development of products that would assist those who are trying to recover from opioid use disorder and provide cheap and accessible prevention mechanisms for overdoses, and to provide for well-thought through, consensually agreed upon by a wide spectrum of parties and appropriately flexible abatement measures. Frankly, it would be worse than embarrassing, it would again be irresponsible and cruel to suggest otherwise.

The last objection by certain of the pro se

objectors that I've already named have contended that the monetary civil settlement under the plan with the Sackler shareholder parties and their related entities is unfair and should not be approved. Of course, in this plan there is a civil settlement with the shareholder parties and their related entities. That is a true statement. That settlement would resolve the Debtors' claims against those parties, i.e., a Debtor settlement of Debtor claims, and would resolve certain related third-party claims based largely on the same conduct behind the Debtor claims or certain of the Debtor claims.

It is extremely important and my main task, notwithstanding that we're now at 1 p.m., to consider whether that settlement is proper under the Bankruptcy Code, both of the Debtors' claims and the related settlement and third-party release and injunction of claims against the settling parties.

One point should be addressed first with regard to this inquiry, and I'm addressing it first in part because it has been raised by the pro se objectors and I believe raised because of what they have read or heard in the media and perhaps from others.

Some of them assert that this Chapter 11 plan and the settlement in it is the Sacklers' plan, or perhaps artfully, some may mislead them by suggesting that, as it is

proposed by the Debtors and the Debtors are the controlling shareholders -- at least they have the shares that would enable them to control the Debtors if that was not foregone by the Sacklers -- the Debtors' plan is, in a sense, the Sacklers' plan, i.e., a plan for the Sacklers' benefit.

While I will separately examine whether the settlement with the Sacklers is fair, one thing should be absolutely clear and is clear, and anyone who says to the contrary is, again, simply misleading the public, this is not the Sacklers' plan. The Debtors are not the Sacklers' company anymore. The Sacklers own the Debtors, but the Debtors are not run by the Sacklers in any way and have not been since before the start of this case. There is, literally, no evidence to the contrary -- none. Although it was not necessary, because the record was clear, the examiner appointed in this case confirmed that.

More importantly, and as recognized by the examiner and as recognized by anyone who paid any attention to this case from its start, this case was driven as much by, if not more than, the Official Unsecured Creditors Committee and the other creditors in the case who formed well-represented ad hoc committees led primarily by the 48 states that have claims against the Debtors, two states having previously settled those claims before the start of the bankruptcy case; led also by groups that had within them

very strong representatives of public non-state governmental entities and Native American tribes.

These creditors are, in essence, the only creditors of this Debtor. And from the start of this case, all of this Debtor's assets were dedicated to them. They wanted more than anything else to obtain as much value, not only from the Debtors and the process of agreeing on a Chapter 11 plan, but also from the Sacklers, who were viewed by all as the other side, the opposition, the potential defendants, the payors. And it is crystal clear that the Unsecured Creditors Committee, the 48 states and territories and the governmental entities were completely, utterly independent and focused on that goal. They were facilitated in achieving that goal by the two incredibly experienced and effective mediators that I've already described.

And further, even after a largely successful mediation of the claims against the Sacklers, both direct by the Debtors and third-party claims by others, which resulted from the mediators' own proposal as to what would be a fair settlement, which was accepted by all except the so-called nonconsenting state group of 24 states and the District of Columbia.

I directed another mediation with another one of the best mediators, not only in the U.S. but the world, my colleague Judge Chapman. Based on her mediation report, she

had over 140 contacts discussions -- and knowing Judge Chapman, I believe they were in depth, serious and well-informed -- before the mediation date set to see whether the nonconsenting states could reach agreement with the Sacklers.

That day turned into a 27-hour day. Judge Chapman, like Mr. Feinberg and former Judge Phillips, is a successful mediator because she does not browbeat people. She could not browbeat these states. That is crystal clear.

She's a successful mediator because she points out the risks and rewards of not reaching a settlement and reaching a settlement, recognizing that the process is always consensual and not coercive. 15 of the states who had previously fought the Sackler settlement and the plan tooth and nail agreed to a modified settlement as a result of that mediation.

I'm saying this not to support or show my support for the underlying settlement but to reflect again or to illustrate again the arm's length negotiation here and the fact that this is not a Sackler plan but a plan agreed to by 80 percent of the states and well over 95 percent of the non-state governments, and actively supported by the Unsecured Creditors Committee, notwithstanding the incredible harm that the Debtors' products have inflicted on them.

Bitterness over the outcome of this case is completely understandable. Where there has been such pain inflected, one cannot help but be bitter. But one also has to look at the process and the issues for their -- in light of the alternatives and with a clear analysis of the risks and rewards of continued litigation versus the settlement set forth in the plan. And it's that process to which I'll turn next.

As I noted, the Chapter 11 plan puts together two settlements related to the Sacklers. It provides for the settlement of the estate's claims -- and when I say the estate's claims, that means the Debtors' claims against the Sacklers for the benefit of their creditors -- and the estates have substantial claims against the Sacklers. Indeed, one can argue that those claims are the main claims against the Sacklers.

In addition, the plan provides for a settlement of certain third-party claims, claims by others or that could be asserted by others, against the Sacklers and their related parties, i.e., the shareholder released parties under the plan.

I will focus first on the settlement of the estate's claims, but I will note before focusing on those claims and the settlement proposed of them that the plan is not just a plan that settles the estate's claims against the

Sacklers and third-parties' claims that are related to those claims against the Sacklers. In fact, the plan contains several interrelated settlements with those settlements and would not be achievable if any of those settlements fell away.

They include a settlement of the complex allocation between, on the one hand, individual personal injury claims and claims by governmental entities, a subject of months of mediation that I've already discussed. They also include a settlement of the allocation of value among the public creditors, the states, and nongovernmental entities and Native American tribes.

Remarkably, all of those parties agreed to use the value they would receive for abatement purposes, the benefits of which I've already described. Other than the personal injury claimants and the NAS claimants, the other private claimants have also agreed, remarkably, to use the value they will receive for abatement purposes, not to go into their private coffers for whatever use they want to have, such as, for example, buying a new x-ray machine.

In addition, during the case, the Debtors settled both civil and criminal claims of the federal government and the plan encompasses those settlements. Importantly, including the agreement by the federal government to release $1.7 of its $2 billion super-priority claim for the benefit

of the other public creditors and abatements if, as is the case under this plan, the plan meets the requirements of the DOJ settlement as far as setting up an abatement structure and the corporate governance and other public purposes that I described for NewCo.

All of those things hinge on at least the amount of money coming to the Debtors from the Debtors and the third-party settlements of the Sackler claims. Without the $4.325 billion being paid by the Sacklers, those other settlements would not happen. The record testimony is clear on that. The private public settlement would fall apart and it's in my view assured that the abatement settlement would fall apart.

That still begs the question, however, is the $4.325 billion, coupled with the other agreements that the Sacklers have made, including with respect to the dedication of the two charities worth approximately $175 million for abatement purposes, their agreement to a resolution on naming rights, their agreement not to engage in any opioid-related business with the Debtors, or any business with NewCo, and their agreement to exit their foreign companies within a prescribed time sufficient? Obviously, more money from the Sacklers would not unravel the settlements that I've already described. However, at least that amount of money is required.

Settlements and compromises of Debtors' claims, these claims asserted or assertable by the Debtors' estates, are a normal part of the process of reorganization in bankruptcy and are strongly favored over litigation. This is in part for the obvious reason that in bankruptcy, the pie is not large enough to feed everyone in full. Therefore, the cost delay factor in deciding whether to approve a settlement or not is even greater than it is in a non-bankruptcy context. While, obviously, an assessment of the merits of the claims that are being settled has much the same weight, the risks of losing a piece of the pie where there's not enough to go around are also greater in a bankruptcy context.

As far as the proposition that such settlements in compromise are a normal part of the process in Chapter 11 or in reorganization, see Protective Committee for Independent Stockholders of TMT Trailer Ferry, F-E-R-R-Y, Inc. v. Anderson, 390 U.S. 414-424 (1968). In determining whether to approve a settlement in compromise, a Bankruptcy Court must make an informed independent judgment that the settlement is "fair and equitable" and "in the best interests of the estate." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991), quoting TMT Trailer Ferry, 390 U.S., 424.

Based on the framework laid out in the TMT Trailer

Ferry Case, courts in this circuit have long considered the following factors in evaluating settlements:

(1) The probability of success, should the issues be litigated, versus the present and future benefits of the settlement, without the delay and expense of litigation and subsequent appeals;

(2) the likelihood of complex and protracted litigation if the settlement is not approved, with its attended expense, inconvenience and delay, including the difficulty on collecting on the judgment;

(3) the interests of the creditors, including the degree to which creditors support the proposed settlement;

(4) whether other interested parties support the settlement;

(5) the competency and experience of counsel supporting, and the experience and knowledge of the court in reviewing the settlement;

(6) the nature and breadth of the releases to be obtained by officers and directors or other insiders; and (7) the extent to which the settlement is the product of arms-length bargaining. See generally, In re Iridium Operating LLC, 478 F.3d 452, 464-466 (2d Cir. 2007).

That case also noted that whether a settlement's distribution plan complies with the Bankruptcy Code's priority scheme will often be the dispositive factor. That

is, unless the remaining factors weigh heavily in favor of approving a settlement, if the settlement varies materially, the priority scheme of the Bankruptcy Code, a court should normally not approve it. That issue does not apply here.

As I have noted in dealing with the objections to classification and treatment under the plan, the plan does not vary the priority scheme of the Bankruptcy Code or otherwise violate the classification requirements and treatment within a class of the Bankruptcy Code.

I will address these factors, or these elements of evaluating a settlement in a different order than laid out by the courts following the Iridium case. I will note that they are applied even in context where part of the settlement involves not the simple trade of money for a claim, but also performance outcomes, such as ceasing to be involved with a product or the agreement by the Sacklers to the document depository and the like. See, for example, Global Vision Products v. Truesdell, 2009 WL 2170253 (S.D.N.Y. 2009).

As I've noted, this settlement was clearly and unmistakably the product of arm's-length bargaining conducted in two separate mediations by capable mediators, preceded by the most extensive discovery process, not only I, but I believe any court in bankruptcy has ever seen.

Again, the record is unrefuted as to the

incredible extent of discovery taken, not only by the Debtors through their Independent Committee, which again, truly was independent, but also the Official Unsecured Creditors Committee in consultation with the non-consenting states group and the other states and governmental entities, in fact anyone who wanted to sign the standard nondisclosure agreement to permit the discovery to proceed without extensive discovery fights over confidentiality.

From the very first day of the case, I made it clear, as recognized also by Chief Justice Judge McMahon in her affirmance of the injunction that I entered, that the Sackler parties and their owned and related entities would have to provide discovery far beyond the normal fishing expedition discovery in bankruptcy cases in order to have the benefit of the temporary injunction or any final stay, and that is exactly what happened.

I did not have to decide one discovery dispute on the record. I had numerous chambers conferences with parties over discovery disputes, which led to, I believe in every instance, additional discovery. There are approximately 10 million documents that have been produced, comprising almost -- well, it's just unfathomable the number of pages.

Consistent with the next factor, which is the competency and experience of counsel supporting the

settlement, not only were the Debtors represented by extremely capable counsel that assisted the Independent Committee in discovering the Debtors' claims against the Sacklers, which are laid out in the uncontroverted declarations of Richard Collura and Mark Rule, and then commented on by John Dubel on behalf of the Board of Special Committee, the Debtors identified over $11 billion of potentially avoidable transfers to various Sackler individuals or entities.

The Creditors Committee did its own discovery, including vetting that extensive exercise. They also thoroughly investigated estate claims that are not in the nature of avoidance claims avoiding transfers, but claims, for example, piercing the corporate veil and breach of fiduciary duty, which would belong to the estate, here, I believe, because at least as far as the record reflects, the basis for such claims would be a generalized injury to the estate and all creditors, rather than to individual creditors. See, for example, St. Paul Fire and Marine Insurance Company v. PepsiCo, Inc., 884 F.2d 688, 704-705 (2d Cir. 1989), and Board of Trustees of Teamsters Local 683 Pension Fund v. Foodtown Inc., 296 F.3d 164, 169 (3d Cir. 2002).

So, again, any statement that there has not been transparency in this case, at least to those who negotiated

the settlement, who again in essence represented all of the people who are creditors in this case, the objecting states, the other governmental entities, the consenting states and the Creditors Committee, is simply incorrect, and particularly as far as an Objecting State is concerned, it's just a lie, flat-out a lie. They know what they had access to. They know how extensive it was.

The only argument they can make -- and I will address that in the future -- is that the public hasn't had access to it. But, of course, if it had not been conducted the way it was by the public's representatives, including the very states that make this argument, there would not have been that level of discovery, because it is not the type of discovery that the public would ever have access to, including in a trial or in, for example, an examiner's examination.

Factors 3 and 4 are closely related to each other, the interests of creditors, including the degree to which creditors support the proposed settlement, and four, whether other interested parties support the settlement. And again, I'm talking solely about the settlement of the Debtors estate's claims.

Given the plan vote, given the support by the Official Unsecured Creditors Committee, 80 percent of the states, 95 percent-plus of the other governmental entities,

and apparently in this context, the United States -- although one can't really make heads or tails of the U.S. Trustee's objection on this point -- it is clear that the creditor body by an overwhelming margin supports the settlement, again, after being fully informed in making that decision, or having their representatives be fully informed in making that decision.

The second issue, or the second factor, which now is next to last, includes an assessment of cost first, i.e., the likelihood of complex and contracted litigation if the settlement is not approved, and secondly, the difficulty in collecting on a judgment. I'll focus on that latter point first, I'll focus on that latter part first, i.e., the difficulty of collecting on a judgment.

As is often the case, parties who support a settlement, such as here, the Creditors Committee, the consenting states, the non-consenting states who now consent, and the Debtors are careful not to lay out all of the reasons that they support the settlement, which usually go to an assessment of the merits, but generally cover legal issues, including legal entitlements to collection, because they are legitimately worried that either, A, the settlement won't be approved, in which case they're actually going to have to run the risk of having given their opponent a roadmap as to the weaknesses in their case and the strengths

in the opponents' case, and a roadmap as to their assessment of the difficulty of collection.

And of course, the settlement in itself does not require -- because then it would not be a settlement -- a full litigation on the merits or collection. I mean, that's simply not, obviously, the purpose of a settlement. Instead, the circuit has directed the Court to make an informed judgment based on the record before it, taking into account these factors.

At one level -- and again, it is the level that has been reported in the media by some -- one would think that this factor clearly weighs against the settlement. The record, I believe, is uncontroverted that the Sacklers, as a family, are today worth -- again, in the aggregate -- approximately $11 billion. Clearly, one could collect, even after the cost of collection, the lawyers' fees, the tracing fees, et cetera, and the discovery has largely been taken as to where the assets are. And the preliminary injunction precluded the Sacklers from transferring their assets further away. So, one would think that one could collect something approaching significantly more than $4.325 billion, plus the money that the Sacklers are paying under their own settlement to the DOJ for settlement of civil claims, plus the access to, or the dedication of, the $175 million worth of charitable assets, which adds up to

something north of $4.5 billion, plus the DOJ settlement.

On the other hand, the Sacklers are not a simple set of defendants. They are a large family, divided into two sides, Side A and B, with eight pods or groups of family members within those sides or divisions. Most of the scores of Sacklers never served on Purdue's Board.

I had testimony from three who at one time or another were officers of Purdue, i.e., in management. Their assets are widely scattered and primarily held offshore, or by people who themselves live outside of the territorial jurisdiction of the United States and might not have subjected themselves sufficiently to the U.S. for a U.S. court to get personal jurisdiction over them.

I want to be clear. I am not deciding that issue. Nor am I deciding whether the trusts that most of the Sackler Family wealth are held in are in fact spendthrift trusts that could not be invaded to collect a judgment, including in a possible bankruptcy case, if the beneficiary of that trust were forced into bankruptcy by a pursuit of litigation by the Debtors or, frankly, by a third-party.

A beneficial interest in a valid spendthrift trust may be excluded from a debtor's bankruptcy estate. Patterson v. Shumate, 504 U.S. 753, 757 (1992); 11 U.S.C., Section 541(c)(2), which states, a restriction on the transfer of beneficial interests of the debt in a trust that

is enforceable under applicable non-bankruptcy law is enforceable in a case under the Bankruptcy Code. That section forces one to look at applicable non-bankruptcy law, which may or not be the law of the United States with regard to these foreign trusts, most of which are established under the law of the Bailiwick of Jersey.

I have the expert declaration of Michael Cushing, an expert in the law of the Bailiwick of Jersey and the enforceability of judgments, that is, U.S. judgments, against trusts organized under that law. There is a substantial issue in my mind as to the collectability under that law, even of a fraudulent transfer claim, although, it is clear to me that under the law of various jurisdictions in the U.S., including New York, that a transfer that is fraudulent to creditors into a spendthrift trust is recoverable for the benefit of creditors. See Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC, 2021 WL 787604, at *10 (S.D.N.Y. 2021), and In re BLMIS, 476 B.R. 715, 728, n.3 (S.D.N.Y. 2012).

In addition, U.S. law does not recognize self-settled trusts that in name only are spendthrift trusts. But again, most of the trusts here are governed by Jersey, that is the Bailiwick of Jersey, law, which according to Mr. Cushing's declaration, which is unopposed on these points, strongly suggests that a different result might apply when

one would go to enforce a judgment obtained in the U.S. for a fraudulent transfer, or on an in personam debt to the trust in the Bailiwick of Jersey, through the Viscount of Jersey and the Jersey court.

Again, I'm not deciding those issues, but given the record before me, and given the agreement of substantially all of the parties in this case to reach a settlement of the estate's claims with the Sacklers, and the due diligence which they have undertaken, which has not been undertaken by the U.S. Trustee, one could infer that the issue of collection is at least a real one.

In addition, Iridium factor number two also takes into account, or requires the Court to take into account, the cost and delay of continued litigation, as opposed to the benefits of a settlement. The cost and delay here, I believe, on an uncontroverted basis for not approving the settlement would be substantial. Those costs are not just the direct costs of pursuing the litigation, the discovery for which has largely occurred, but the litigation pursuit, including a trial, would have to take place.

But in addition to that, there is the cost resulting from the unraveling of the other settlements that I have just described. And I believe that the record here strongly reflects that if the settlement of the Debtors' claims, the estate's claims, were not approved, the parties

would be back essentially to square one on allocating the value of the Debtors' estate, including any ultimate recovery on the estate's litigation claims.

In that regard, the litigation analysis reflected in Mr. DelConte's second declaration, which contains a liquidation analysis, is instructive. Under the most realistic scenarios, there would be literally no recovery by unsecured creditors from the estate in a Chapter 7 liquidation, which is, I believe, the most likely result if this settlement were not approved, given the unraveling of the heavily negotiated and intricately woven compromises in the plan.

One reason for that is that in a liquidation scenario, the United States' agreement to forego $1.7 billion of its $2 billion superpriority administrative claim for the benefit of the abatement program by the states would disappear. The United States would be entitled to all of that money first.

That leaves the last factor, which really in most settlements is the most, or depending on the difficulty of collection, one of the most important factors, namely a comparison of the results of litigation as against the results of a settlement.

As I noted, as with the issue of difficulty of collection, the parties supporting the settlement have been

careful not to lay out their views of the defenses that the Sacklers released parties would have to the estate's claims. And of course, because it is a settlement, there's been no trial on the merits of those claims.

On the other hand, I do have reports as to the nature of the transfers, when they occurred, what they were, and who they were to, and also some testimony as to the involvement of some of the Sacklers in the running of Purdue, which is relevant to the estate's claims, separate and apart from avoidance of fraudulent transfers, namely claims for piercing the corporate veil, alter-ego liability, breach of fiduciary duty, and the like.

I also have an extensive submission by both sides of the Sackler Family, or submissions by both sides of the Sackler Family, that do state the defenses they would argue. I heard the testimony of four members of the Sackler Family, two from Side A and two from Side B, and that too is informed by views on the merits here, although that testimony primarily went not to fraudulent transfer claims but to other claims related to their role in Purdue's governance, and the decisions made that have led to trillions of dollars of claims being filed against Purdue and a criminal plea and settlement by Purdue with the Department of Justice from 2020.

Again, I want to be clear, I'm not making a

decision anywhere close to being on the merits. This assessment is not, therefore, in any way something that could serve as collateral estoppel or res judicata. Nor do I particularly have any fondness for the Sacklers or sympathy for them.

I will note the following, however. The Sackler Family, 77, I believe, of them, received comprehensive releases from almost all of the states in 2007. In addition, 2007 is about as far back under any theory that one could look to avoid a fraudulent transfer.

So one would, both for estate claims and for third-party claims, be looking at primarily, if not exclusively, actions by the Sacklers or transfers that took place after 2007. Over 40 percent of those transfers went to pay taxes, including in large amounts to certain of the objecting states or the states that continue to object to the plan. The fact that it went to pay taxes did obviously relieve the Sacklers of an obligation.

I do, however, have testimony from Jennifer Blouin, that if the partnership structure of Purdue was not in place with the taxes running through the Sacklers, Purdue itself would be liable for them and, therefore, arguably received fair consideration for the payment.

The Sacklers would also argue that after the 2007 settlement with the federal government and the states, the

U.S. Department of Health and Human Services entered into a five-year corporate integrity agreement with the company to monitor its compliance with federal healthcare law, which took place from July 31, 2007 to July 30, 2012. And that agreement is available as part of the record, but it can also be obtained as a matter of judicial notice.

In 2015, well after Purdue implemented a "Abuse and Diversion Detection program", the New York Attorney General required that program to be subject to annual reviews from 2015 to 2018. They would argue that that compliance, both with the OIG monitor and those reviews, detailed no improper actions by Purdue, and therefore, there couldn't be any improper actions by the Board.

In addition, they would argue that solely as Board members, they would not have a fiduciary duty for actions of Purdue and its management that were improper or unlawful, unless they were aware of them. Of course, it would be very much a triable issue as to whether they were in fact aware of them. Those who were not on the Board, of course, would say that law didn't even apply to them.

They would also argue the applicability of various statutes of limitations to the fraudulent transfer claims that would limit the reach-back by the estate to most of the claims. The estate would have arguments to the contrary, based on rights that unique creditors like the federal

government would have to serve as a "Golden Creditor" under Section 544 of the Bankruptcy Code.

The Sacklers would also argue that following the 2007 settlement, Purdue paid manageable amounts in settlements between 2008 and 2019 of litigation claims related to opioid matters or other litigations that would affect the solvency of Purdue, and that as recently as 2016, Purdue was receiving ratings from rating agencies that indicated that it was financially healthy, and therefore, they would contend, except for the last year or so before the bankruptcy filing date, were only a very small amount, relatively speaking, of the roughly $11 billion of transfers that the Debtors' estate would contend are avoidable took place. Purdue was not insolvent, and one could not impute intentional fraudulent transfer liability to it.

Of course, there are statements in the record to suggest that the Sacklers were very aware of the risk of litigation. A trial might well also establish, as some of the testimony that I heard from the Sacklers that as a closely held company, Purdue was run more than by a normal board, by its Board and shareholders, i.e., the Sacklers, and that notwithstanding the denials by the Sacklers who testified, at least those who were on the Board, and perhaps others who with the votes of their family members could control ultimately the Board, were aware of the harms of

Purdue's product and should not have rested or taken comfort in either of the FDA's sign-off on various labels and marketing initiatives or the reports by the Office of the Inspector General or the auditor of the Abuse and Diversion Detection program.

I believe that standing in a vacuum on the merits, the claims that would be achieved, the ultimate judgment that would be achieved on the estate's claims and related third-party claims that are being settled under the plan, would be higher than the amount that the Sacklers are contributing. But I do not believe that they would be higher after taking into account the catastrophic effect on recoveries that would result from pursuing those claims and unravelling the plan's intricate settlements. And as I said at the beginning of this analysis, there is also the issue of problems that would be faced in collection.

This is a bitter result. B-I-T-T-E-R. It is incredibly frustrating that the law recognizes, albeit with some exceptions, although fairly narrow, the enforceability of spendthrift trusts. It is incredibly frustrating that people can send their money offshore to offshore spendthrift trusts that may not recognize U.S. law.

It is incredibly frustrating that the vast size of the claims against Purdue and the vast number of claimants creates the need for the intricate plan settlements, since

at least in some measure I believe that at least some of the Sackler parties also have liability for those claims. But those things are all facts that anyone who is a fiduciary for the creditor body would have to recognize, and that I recognize.

A settlement is not evaluated in a vacuum as a wish list. It takes an agreement, which means that it generally, if properly negotiated -- and I believe that's clearly the case here -- reflects the underlying strengths and weaknesses of the parties' legal position and issues of collection; not moral issues, or how someone might see moral issues.

It's not enough to say we need more, or I don't care whether we don't get anything; I'd rather see it all burned up. One has to really focus on the consequences of those two approaches.

I must say that when I approached the middle stage of this case before the mediation, I would have expected a higher settlement. And frankly, anyone with half a brain would know that when I directed a second mediation, courageously undertaken by Judge Chapman, I expected a higher settlement. Nevertheless, extremely well-represented and dedicated parties on the Plaintiffs' side, knowing far more than I have laid out today of the strengths and weaknesses of the case and collection and the like, agreed

to this settlement.

I am not prepared, given all of the record before me, to risk that agreement. I do not have the ability to impose what I would like on the parties. The Judge is not given that power. I can only turn down the request for approval of it. Given this record, I'm not prepared to do that, as much as I would like to impose a higher recovery.

I will note, as far as the bona fides of the settlement is concerned, and notwithstanding my reservations, 100 percent of this formerly closely-held company -- that is, closely held by the Sacklers -- is under this plan taken away from them and devoted to abating opioids' ill effects in one way or another.

In addition, the amount being paid is to my knowledge the highest amount any shareholder group has paid for these types of claims. Throughout the history of litigation involving Purdue, the Sacklers themselves were not targets, except for the relatively modest settlements that they entered into with the states in 2007 until very recently. The entire negotiation process in this context has magnified that target on them, on that focus on them.

While I would wish that the amount would be higher, as I believe everyone on the other side in this case, including the Debtors does, the settlement itself fairly reflects the standards laid out by the Supreme Court

in the Second Circuit in evaluating a settlement. And clearly, both it and the process in arriving at it has not been in any shape or form a free ride for the Sacklers or enabled them to "get away with it."

If what people mean by getting away with it is getting relieved of criminal liability, that is obviously not the case. And I believe, given all of the factors that I've outlined, they are paying a substantial, and under the circumstances of this case, approvable amount, as well as the other aspects of the settlement that they are agreeing to.

I will note, finally, that as alluded to this morning by the Debtors' counsel, they have agreed also to enforcement mechanisms that are quite rigorous as part of the settlement agreement, so that the collection problems that I had addressed, or the potential collection problems, are far lessened by the settlement if they don't live up to it, including as to the ability to hide behind foreign spendthrift trusts.

So, to the extent that objectors have objected to the merits of the settlement of the Debtors' estate's claims, I will overrule those objections.

That leaves the last issue for determination, which is the most complex issue. It is in large measure informed by the analysis that I've just gone through, which

as I'm sure you'll note, included not just an assessment of the estate's claims, when considering the alternative to the estate settlement, but also the merits of third-party claims closely related to the estate's claims, and particularly focused on claims beyond fraudulent transfer avoidance.

There are multiple grounds for the objecting parties' objection to the non-consensual release under the plan and injunction of their third-party claims against the shareholder settling parties.

I will note that certain of those objections went to issues that I agreed with the objectors over, namely the breadth of the releases in the plan. The current form of the plan has substantially narrowed those releases. The settling shareholder parties, unless, of course, they default on the settlement, are now being released only of opioid-related claims of third-parties, and I will go into in detail what that release involves.

Other released parties are released as well under the plan, but it is clear, given the revised definitions, including those that came in overnight, that those releases deal with a release of claims that are truly derivative of the Debtors and simply prevent third-parties from going after those parties through the back door, only to later learn that those claims had been released by the Debtors under the plan.

The first objection to the third-party release of the Sacklers is a jurisdictional one, i.e., the contention that the Court lacks jurisdiction -- subject matter jurisdiction, to impose the release of the shareholder released parties on those who do not consent to it and who have, in fact, objected to it.

It's axiomatic that federal courts, including the bankruptcy courts, have only the jurisdiction given to them and no more. Under 28 U.S.C. Section 1334(b), however, the bankruptcy courts, through the reference from the district courts in 28 U.S.C. 157, do have broad jurisdiction with respect to matters that are related to the Debtors' property and case.

This includes the power to enjoin claims of third-parties that have a conceivable effect on the Debtors' estate. As noted by the Supreme Court in Celotex Corp. v. Edwards, which involved a preliminary injunction of a third-party's right to pursue a third-party claim, 15 U.S. 300, 307-308 (1995). "Congress did not delineate the scope of 'related to' jurisdiction, but its choice of words suggests a grant of some breadth."

In this circuit, "A civil proceeding is related to Title XI case if the action's outcome might have any conceivable effect on the bankrupt estate." See SPV OSUS, Limited v. UBS AG, 882 F.3d 333, 339-40, citing Parmalat

Capital Finance, Limited v. Bank of America Corp., 639 F.3d 572, 579 (2d Cir. 2001).

That jurisdiction is not limitless, id., but it does extend to where there is a legal effect, even through an indemnification agreement or contribution rights, including by, as set forth in the SPV OSUS case, someone who has not, despite those rights, filed a proof of claim in the case. The Second Circuit has extensively dealt with this issue in the context of this Court's jurisdiction over actions to stay or prevent the assertion of third-party claims in bankruptcy cases, the most recent version of which, which the objectors largely ignored, if not entirely ignored, is the Second Circuit's decision in In re Quigley Company, 676 F.3d 45 (2d Cir. 2012).

The court there went through a lengthy analysis of its jurisdiction -- bankruptcy jurisdiction, that is -- to preclude the pursuit of a third-party claim, including an analysis of Section 1334 of the Judicial Code which provides for original jurisdiction in the district courts, which is then referred under section -- 28 U.S.C. Section 157 for, "all cases under Title XI," and "all civil proceedings arising under Title XI or arising in or related to cases under Title XI."

The dispute in Quigley reflected some arguable confusion in the Second Circuit over the extent of this

jurisdiction when dealing with an injunction of third-party claims, including under a plan, that was arguably injected by the circuit in a case that the objectors do extensively cite, In re Johns-Manville Corp., 517 F.3d 52 (2d Cir. 2008), reversed sub nom Travelers Indemnity Company v. Bailey, 557 U.S. 137 (2009), which the Circuit in the Quigley case refers to as Manville III.

In that case, the Circuit had left the impression that the only source for jurisdiction to enter a course of release of third-party claims and an injunction to support it is where the claim would be a derivative claim. I'll come back to that point in a moment.

The point was somewhat cleared up in the next Manville case, referred to as Manville IV in the Quigley opinion, appearing at 600 F.3d 152. But the Quigley case took it head on. In that case, a party who had brought a third-party claim against an insurer, notwithstanding the Manville Chapter 11 plan's injunction of claims against insurers, asserting that the bankruptcy court did not have jurisdiction to enjoin such a claim because it alleged a violation of an independent legal duty owed by the defendant, a third-party, rather than claims that are "derivative."

The Circuit disagreed that that was the limitation on jurisdiction imposed by it in Manville III, 676 F.3d at

54. The Circuit went on to say, because the third-party's mistake as to the nature of the jurisdictional inquiry under 28 U.S.C. 1534(b) stems from a misunderstanding of our caselaw's treatment of derivative liability in the context of bankruptcy jurisdiction, we discuss our previous cases addressing this subject in some detail.

It then goes on to state, "After analyzing Manville I, the MacArthur Company v. Johns-Manville Corp. case at 837 F.2d 89, that there was no independent requirement of a derivative claims for the exercise of jurisdiction. Rather, the claim was based upon the effect of the third-party claim on the estate."

The Circuit then went on to state, "Manville III did not work a change in our jurisprudence. After Manville II, as before, a bankruptcy court has jurisdiction to enjoin third-party non-Debtor claims that directly affect the res of the bankruptcy estate.

"As in MacArthur, the salience of Manville III's inquiry as to whether Travelers' ability was derivative of the Debtor's rights and liabilities was that, in the facts and circumstances of Manville III, cases alleging derivative liability would affect the res of the bankruptcy estate, whereas, cases alleging non-derivative liability would not.

"However, it did not impose a requirement that an action must both directly affect the estate and be

derivative of the Debtors' rights and liabilities for bankruptcy jurisdiction over the action to exist." 676 at 56 through 57.

It then further discussed the Manville IV case and then stated, "It thus appears that our case, from our caselaw, that while we have treated whether a suit seeks to impose derivative liability as a helpful way to assess whether it has the potential to affect the bankruptcy res, the touchstone for bankruptcy jurisdiction remains 'whether its outcome might have any conceivable effect on the bankruptcy estate.'"

This test has been -- I'm continuing now, because I'm omitting the citation. "This test has been almost universally adopted by our sister circuit," citing the Celotex Corp. that I previously cited, collected case, "which in some instances have found bankruptcy jurisdiction to exist over non-derivative claims against third-parties. See -- citing In re Stonebridge Technologies, Inc., 430 F.3d 260, 263-64 and 267 (5th Cir. 2005) and In re Dogpatch USA, Inc., 810 F.2d 782, 786 (8th Cir. 1987).

And then stating, "A suit against a third-party alleging liability not derivative of the Debtors' conduct but that nevertheless poses the specter of direct impact on the res of the bankrupt estate may just as surely impair the bankruptcy court's ability to make a fair distribution of

the bankrupt's assets as a third-party suit alleging derivative liability.

"Accordingly, we conclude that where litigation of the third-party suits against the third-party would almost certainly result in the drawing down of insurance policies that are part of the bankruptcy estate of the Debtor, the exercise of bankruptcy jurisdiction to enjoin these suits was appropriate."

I conclude here, based upon the adverse effect of the third-party claims that are covered by the shareholder release, as I will further narrow it, do affect the res of the estate, including insurance rights, and rights to indemnification and the Debtors' ability to pursue its own claims.

Certain of the objectors cite a pre-Bankruptcy Code, pre-28 U.S.C. Section 1334 case from the Supreme Court, Callaway v. Benton, 336 U.S. 132 (1948), for the proposition that there is no such jurisdiction. Of course, Section 1334 is broader than the jurisdictional mandate that applied at that time in that case.

"It is rather a dramatic change to the jurisdictional scheme from the bankruptcy laws administered before that time and is meant to be interpreted broadly, as laid out by the caselaw, as well as commentators. See Howard C. Buschman, III and Sean P. Madden, "Power and

Propriety of Bankruptcy Court Intervention and Actions Between Non-debtors," 47 Business Lawyer 913, 914-19, May 1992. See also In re Dow Corning Corp., 255 B.R. 445 (E.D. Mich. 2002), vacated on other grounds, Class Five Nevada Claimants V. Dow Corning Corp. (In re Dow Corning Corp.) 280 F.3d 848 (6th Cir. 2002).

One example of the Court's recognition of the breadth of bankruptcy jurisdiction under the Bankruptcy Code in 28 U.S.C. Section 1334, although not directly on point, is United States v. Energy Resources Company in 495 U.S. 545 (1990). Although, again, the Court must go through the analysis gone through by Quigley and other courts to find the necessary conceivable effect on the Debtors' estate for there to be subject matter jurisdiction, although I have done that here.

I will note that another case that the objectors rely on, In re Aegean Marine Petroleum Network, Inc., 599 B.R. 717 (Bankr. SDNY 2019) as questioning the ability of the bankruptcy court to ever impose a release of a third-party claim as a jurisdictional matter, which case cites the Callaway v. Benton case, and does not cite the Quigley case because -- well, I don't know why, maybe it wasn't raised to a judge -- nevertheless acknowledges that where there is "a huge overlap between claims that a debtor is making against its parent company and various other parties were making

against that non-debtor company or where there is a direct connection between the asset or the claims of the debtor and the contributions that were being made for both resolving those claims and claims basically aligned with those claims, those estate claims, such a release would be appropriate," id. at 727.

So, I conclude that there is, depending on the nature of the release, jurisdiction to enter an order enforcing a plan that has such a third-party claim release in it and that that jurisdiction is based upon the effect of the claims on the estate, rather than that the claims are "derivative." Although, if they are derivative, that is a good sign that they affect the estate. Again, see Quigley, 676 F.3d at 52.

The objectors have also raised the objection that the release of third-party claims is a violation of due process under the Constitution. There are really two aspects to this objection. The first is one that the courts in this circuit do not accept, which is that such a release is an adjudication of the claim. It is not. It is part of the settlement of the claim that channels the settlement funds to the estate. See Manville I, 837 F.2d 89, 91-92 (2d Cir. 1988) and In re Kirwan Offices, S.a.R.L., Lynch v. Lapidem, Limited, 592 B.R. 489, 504-505.

See also In re Millennium Lab Holdings, II, LLC,

575 B.R. 252, 273 (Bankr. D. Del. 2017), affirmed 591 B.R. 559 (D. Del. 2018), affirmed 945 F.3d 126 (3d Cir. 2019), cert. denied, 140 S. Ct. 2085 (2020). "An order confirming the plan with releases does not rule on the merits of the state law claims" -- or in this case, third-party claims -- "being released."

The other aspect of the due process objection goes to the notice that was provided with respect to the release. It is now clear, under the plan, that only holders of claims against the Debtor or Debtors are being released under the third-party shareholder release, and it is clear from the factual record that holders of claims received, in my view, due process notice, not only of the bankruptcy case, but of the plan's intention to provide a broad release of third-party claims against the shareholders and their related entities related to the Debtors as a whole.

Indeed, at that time, with that notice, including the simple form notice that went out, the release was far broader than it is today. To argue that because it was more complicated then, because it was broader, is somehow a violation of due process, is equally incorrect. Ultimately, the issue of what process is due requires a court to ask whether in the connection with the confirmation hearing notice was sent that was reasonably calculated under all the circumstances to apprise interested parties of the pendency

of the request and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306, 314 (1950).

See also Elliot v. GM, LLC (In re Motors Liquidation Company), 829 F.3d 135, 158 (2d Cir. 2016). As noted by the Circuit in that case, this requirement obviously applies to bankruptcy proceedings and there, notice turns upon what is reasonably known by the Debtor of the party who would be affected by the action that the Debtor is taking.

It appears, to me, again, based upon Ms. Finegan's testimony, that holders of claims received sufficient notice of the release. Indeed, the broader assumption, I believe, fostered in the media is that the release even included criminal liability, which it doesn't. In fact, there were multiple objections to the plan, based upon the third-party release, and I conclude that compliance with the procedures laid out by Ms. Finegan and with the dictates of Bankruptcy Rule 3016, which requires bolding of the release language, is, in fact, sufficient.

See, for example, In re Otero County Hospital Association, Inc., 551 B.R. 463, 471-2 and 478-79 (Bankr. D.N.M. 2016), In re Retail Group, Inc., 2021 WL 2188929 (Bankr. E.D. Va. May 28, 2021), and Finova Capital Corp. v. Larson Pharmaceutical Inc., 2003 U.S. Dist. LEXIS 26681,

affirmed Finova Capital Corp. v. Larson Pharmacy, Inc. 425 F. 3d, 1294 (11th Cir. 2005).

If someone can make the case after the fact that they did not receive the type of notice that Ms. Finegan testified to or the Debtor could be said to be aware of them actually, and therefore, given them improved notice, they would have the right to come back and argue that, as was the case in the Motors Liquidation Second Circuit opinion that I've cited.

But as far as the record before me is concerned, I find that the notice of the plan, confirmation hearing and request for approval of the third-party release satisfied due process.

The next objection to the third-party release provision in the plan pertaining to the shareholder settlement is an objection based on the power of the bankruptcy court to issue a final order confirming the plan as opposed to the bankruptcy court's jurisdiction to approve confirmation of the plan as it related to jurisdictional matter under 1334(b) and (a).

This issue was not addressed until fairly recently, but it has been addressed now at length in two opinions that I will simply refer to, because I believe the logic of these opinions cannot be improved upon as far as the bankruptcy court's authority in the context of a

concededly core proceeding, namely consideration of whether a Chapter 11 plan should be confirmed or not, which is the fundamentally central aspect of a Chapter 11 case, is, in fact, core, not only under 28 U.S.C. 157(b) but also core as a constitutional matter, being within the power traditionally exercised by bankruptcy courts to confirm plans and provide for the allocation of property of the estate.

So, I will refer parties to those opinions. See In re Millennium Lab Holdings II, LLC, 945 F.3d 126, cert. denied, Loan Trust v. Millennium Lab Holdings, 2020 U.S. LEXIS 2850 (May 26, 2020). I'd also commend, as did that court, the lower court opinions in that case, Opt-Out Lenders v. Millennium Lab Holdings II, LLC, 591 B.R. 559 (D. Del. 2018) and In re Millennium Lab Holdings II, LLC, 575 B.R. 252 (Bankr. D. Del. 2017).

Also applicable here, I believe, directly on point is Lynch v. Lapidem Limited, In re Kirwan Offices, S.a.R.L., 492 B.R. 489 (SDNY 2018), affirmed Lynch v. Mascini Holdings, Limited, In re Kirwan Office, S.R.L. 2019 U.S. App. LEXIS 38068 (2d Cir. 2019).

I will note that in that affirmance, the Circuit did not reach the determination by former Chief Judge McMahon that this was a core -- this type of injunction is a core proceeding within a core proceeding, but I believe her

logic is correct and I believe that that logic would distinguish her statement in Dunaway v. Purdue Pharma, LP, 619 B.R. 318, where she was dealing not with a Chapter 11 plan, but rather a request for a preliminary injunction under 105 of the Bankruptcy Code, and in that context, concluded, I believe correctly, although she was reversing me on the point, that in that context, the court had only related-to jurisdiction because it was not a core matter like a plan. At least, that's how I read the decision.

That still leaves, however, the merits of the application of the court's jurisdiction and power to enter a final order to the third-party claim release an injunction in the plan pertaining to the shareholder release parties.

Most of the caselaw on this topic -- and there is a lot of caselaw at the circuit level as well as at the lower court level -- does not deal with the foregoing jurisdictional and Article III, Article I power issues. It deals with the statutory source for the claimed ability to enforce a coercive release of a third-party claim and the limited circumstances in which that would occur.

Every circuit at this point has an opinion on the issue. The clear majority of circuits supports the issuance of releases on a coercive basis of third-party claims under appropriate, narrow circumstances. Monarch Life Insurance Company v. Ropes and Gray, 65 F.3d 973, 984-85 (1st Cir.

1995), Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.) 416 F.3d 136, 141 (2d. Cir. 2005) and the cases cited therein from the Second Circuit, including the Manville case that I previously cited as well as the Drexel case which I'll cite in a moment.

In re Millennium Lab Holdings II, LLC, which I've just cited from the Third Circuit, 945 F.3d 126, 133-40. National Heritage Foundation, Inc. v. Highbourne Foundation, Inc., 760 F.3d 344, 350 (4th Cir. 2014), cert. denied, 135 S. Ct. 961 (2015) and In re A.H. Robins Company, Inc., 880 F.2d 694, 700-02 (4th Cir. 1989), In re Dow Corning Corp., 280 F.3d 648, 656-58 (2nd Cir. 2002), In re Airadigm Communications, Inc., 519 F.3d 640, 655-59 (7th Cir. 2008), and In re Ingersoll, Inc., 562 F.3d 856 (7th Cir. 2009), which held even that those who hold -- who don't hold a claim against the Debtors' estate can be bound by such a release under appropriate circumstances.

In re Seaside Engineering and Surveying, Inc., 780 F.3d 1070, 1076-79 (11th Cir. 2015) and In re AOV Industries, Inc., 792 F.2d 1140, 1153 (D.C. Cir. 1986).

Three circuits are on record as holding that third-party releases are improper for a bankruptcy court or a court exercising bankruptcy jurisdiction to compel on a third-party. See Bank of New York Trust Company v. Official Unsecured Creditors Committee (In re Pacific Lumber

Company), 584 F.3d 229, 252 (5th Cir. 2009), Resorts International v. Lowenschuss (In re Lowenschuss), 67 F.3d 1394, 1401-02 (9th Cir. 1995) and Lansing Diversified Properties-II v. First National Bank and Trust Company of Tulsa (In re Real Estate Fund, Inc.) 922 F.2d 592, 600 (10th Cir. 1990).

The following can be said about those three cases or the line of cases from those three courts. First, they are based fundamentally on a view that Section 524(e) of the Bankruptcy Code precludes the grant of such a release. That section says, "Except as provided in Subsection A3 of this Section" -- which is irrelevant here -- "discharge of a debt of the debtor does not affect the liability of any other entity on or the property of any other entity for such debt."

I will note in a moment that several of the cases, and I believe they employ the right analysis, including the Second Circuit's Manville I case, refute that view as a statutory matter. I will note further that in the Pacific Lumber case, the Fifth Circuit noted, "Non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets in a context of 'global settlements' of mass claims against the Debtors and co-liable parties," citing a similar observation by the Fifth circuit in Feld v. Zale Corp., 62 F.3d 746, 760-61 (5th Cir.

1995).

That quote was from 584 F.3d 252 from the Fifth Circuit's Pacific Lumber case. I will note further, that notwithstanding its reliance on Section 524(e) as precluding any release which the Circuit had in Lowenschuss and prior case such as In re American Hardwood, 885 F.2d 621 (9th Cir. 1989), equated with a discharge. The circuit -- the Ninth Circuit held that a release of a third-party claim limited to actions taken in or related to the bankruptcy case could, in appropriate circumstances, be imposed in a plan, which undercuts the 524(e) analysis, since post-bankruptcy, pre-confirmation claims would be subject to the discharge as well. 961 F.3d 107 -- I'm sorry.

See Blixseth v. Credit Suisse, 961 F.3d 1074, 1081-85 (9th Cir. 2020). I will note further that the Western Real Estate Fund case from the Tenth Circuit from 1990 did recognize, as the American Hardwoods case also recognized, the propriety of imposing a temporary stay of third-party claims to "facilitate the reorganization process," one wonders why, if one is not bound by the 524(e) arguments, such a temporary stay could not become a permanent stay if the reorganization process would be appropriately facilitated over the objections of a small number of creditors who assert third-party claims.

In any event, that opinion, has been interpreted,

and, I believe, cogently, although fairly bravely, by a court in the Tenth Circuit as not standing for the proposition that 524(e) of the Bankruptcy Code clearly precludes all third-party releases and that Section 105(a) of the Bankruptcy Code and other applicable bankruptcy law might, in appropriate circumstances, justify a release of third-party claims. In re Midway Gold, 575 B.R. 475, 505 (Bankr. D. Colo. 2017).

The argument upon which the three cases that I've just gone through at some length from the Fifth, Ninth, and Tenth Circuit, which go against the majority of cases dealing with third-party releases, relies upon a theory that Section 524(e)'s language, which I've quoted, precludes to grant a release as part of a settlement under a plan.

This view, I believe, is appropriately addressed and refuted by a number of courts, including the Airadigm Communications, Inc., 519 F.3d 640, and the Sixth Circuit in In re Dow Corning Corp., 280 F.3d 648 (2006).

It's also effectively refuted by the distinction made in the Manville and Lynch v. Lapidem cases that I previously cited, which distinguish a discharge from a settlement of claims.

It is also inconsistent with Section 524 itself; 524(g) of the Bankruptcy Code specifically provides for certain third-party releases, if certain conditions are met

in a plan that deals with asbestos liabilities and a trust set up for asbestos liabilities, including the affirmative vote of the affected class in a super-majority of 75 percent, which, as I've noted here, has been well exceeded.

But more importantly, Section 524(h) of the Bankruptcy Code recognizes that this provision, 524(g), does not mean that plans that were confirmed before the enactment of Section 524(g) are, in fact, unlawful. And indeed, the legislative history to the amendment makes that point, stating Section, at that point 111, but it became 524(h).

"Makes a rule of construction to make clear that the special rule being devised for the asbestos claim trust/injunction mechanism is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization. Indeed, Johns-Manville and UNR firmly believe that the court in their cases had full authority to approve the trust injunction mechanism, and other debtors in other industries are reportedly beginning to experiment with similar mechanisms.

"The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind. The Committee has decided to provide explicit authority in the asbestos area because of

the singular, cumulative magnitude of the claims involved. How the new statutory mechanism works in the asbestos area may help the Committee judge whether the concept should be extended into other areas." 140 Cong. Rec. H-10752-01, appearing in 1994 WL 54573, (October 4, 1994).

Similar commentary appears in Senator Heflin's remarks appearing at 140 Cong. Rec. S14461-01, 1994 WL 553390 at S14461 regarding the Bankruptcy Reform Act of 1994, where Senator Heflin states, "Finally, Mr. President, with respect to the senator's specific question, this section applies to injunction in effect on or after the date of enactment."

What that means is, for any injunction that may have been issued under a court's authority under the code prior to enactment, such an injunction is afforded statutory permanence from the date of enactment forward, assuming that it otherwise meets the qualifying criteria described earlier.

It appears clear to me, therefore, under well-reasoned caselaw as well as the code itself that 524(e) is not an impediment to the court's -- statutory impediment, that is, to the court's issuance or enforcement of a third-party claim release in appropriate circumstances.

That raises the issue, however, what is the court's statutory or other source of power, which also has

been discussed ably, I believe -- it's not really my position to comment one way or the other as to whether it's able or not, but it's been discussed thoroughly, I believe, and appropriately applied at the appellate level.

Again, see In re Airadigm Communications, Inc., 519 F.3d 640, 657 (7th Cir. 2008), where the Circuit after determining that Section 524(e) is not a bar to the grant of release, states, "The second related question dividing the circuits is whether Congress affirmatively gave the bankruptcy court the power to release third-parties from a creditor's claims without the creditor's consent, even if 524(e) does not expressly preclude the releases."

"The bankruptcy applies the principle and rules of equity jurisprudence," Pepper v. Litton, 308 U.S. 295, 304 (1939), and its equitable powers are traditionally broad, citing United States v. Energy Resources Company, Inc., 495 U.S. 545, 549 (1990).

"Section 105 of the Bankruptcy Code codifies this understanding of the bankruptcy court's powers by giving it the authority to effect any 'necessary or appropriate order to carry out the provisions of the Bankruptcy Code, and a bankruptcy court is also able to exercise these broad equitable powers within the plans of reorganizations themselves.'

"Section 1123(b)(6) of the Bankruptcy Code permits

a court to 'include any other appropriate provision not inconsistent with the applicable provisions of this title.' In light of these provisions, we hold that this 'residual authority' permits the bankruptcy court to release third-parties from liability to participating creditors if the release is 'appropriate' and is not inconsistent with any provision of the Bankruptcy Code."

See also Class Five Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.) 280 F.3d 648, 656 - 658.

I'll now turn to what types of claims can, in fact, be released under that power, a topic that, again, directs one back to the Second Circuit's Quigley case that I repeatedly cited, 676 F.3d 45.

In that case, the court extensively discussed the relation of its use of the term derivative claims to both the court's jurisdiction to impose a mandatory release of third-party claims and the court's power to do so, in appropriate circumstances.

The use of the term derivative claim which really, I believe began in the Manville III case, which appears at 517 F.3d 56, is an unfortunate one. There is a widely accepted definition of the term, that is derivative claim, it's a claim that is asserting injury to the corporate entity and requesting relief that would go to the corporate

entity. See Donahue v. Bulldog Investments, Gen. P'ship, 696 F.3d 170, 176 (2nd Cir. 2012).

The Circuit has spent an enormous amount of time and resources interpreting what I would refer to as true derivative claims, i.e. those that are really claims asserted by third-parties, but properly existing in the bankrupt's estate, and belonging to the estate. Much of this analysis occurred in the Madoff Case where various third-parties tried to pursue for their own benefit as opposed to for the benefit of the estate, claims against third-parties and the court determined whether, in fact, those claims were really claims of the third-party or claims brought by the third-party, that would have to be, if there was any recovery, part of the debtor's estate as opposed to collected only by the third-party.

In these types of cases, the court looks at whether the relief sought by the third-party claimant against the third-party defendant, are really secondary harms that flow primarily to the estate. See Marshall v Picard, (In re Bernard L. Madoff Investment Securities LLC, 740 F.3d 81 (2nd Cir. 2014) and Tronox Inc. v. Kerr McGee Corp, (In re Tronox Inc.) 855 F.3d 84 (2nd Cir. 2016). They defend the right -- the strong bankruptcy policy to a weighable recovery from the debtor's estate, which is a concomitant requires that claims that purport to be

independent of the remedy for the debtor's estate, but are, in fact, arising from harm to the debtor, be for the debtor's benefit, and not the third-party's benefit.

This is the type of claim that is included within the non-opioid release for non-Sackler shareholder parties. That release, as defined in the non-opioid excluded claim definition, does not include, instead it excludes any cause of action that does not alleged, expressly or impliedly any liability that is derivative of any liability of any debtor or any other estates.

If, in fact, those types of claims were the only claims to be released, we would not be talking about a third-party claim release. We would be talking about a release that clarifies and protects the estate from backdoor attacks, through the assertion of purportedly third-party claims, that, in fact, are estate claims.

Instead, third-party releases, quite often, involve independent claims, at least independent as a legal basis, if not as a factual basis. See, for example In re Drexel Burnham Lambert Group, 960 F.2d 285 (1992). The claim asserted by the California Department of Toxic Substances Control against third-parties in California Department of Toxic Substances Control v. Exide Holdings, Inc. (In re Exide Holdings, Inc.) 2021 U.S. District LEXIS 138478 (D. Del. July 26, 2021) and in Cartalemi v. Karta

Corp. (In Re Karta Corp) 342 B.R. 45 (S.D.N.Y. 2006).

The question is what sorts of independent legal claims are properly covered by a third-party injunction. On this point, as in so many others, the Circuits' opinion in the Quigley case, albeit in that it discusses liability under Section 524(g), provides real guidance.

In that case, the party relying upon a third-party release, an insurance company, argued that because the claim against it would not have arisen but for the debtor because the debtor distributed its products, it would be covered properly by the release. That third-party claimant said otherwise and in this instance, as opposed to in the jurisdictional argument, the Circuit agreed with the claimant.

The court concluded that the but/for test creates too much of an accidental nexus to the bankruptcy estate and that instead the third-party claim to be subject to the injunction must arise as a legal consequence of the debtors' conduct or the claims asserted against it such that that conduct must be a legal cause or a legally relevant factor to the third-party's alleged liability, 676 F.3d 45, 59-60.

This is a consistent theme throughout the case law, independent liability may be enjoined if it is dependent on the debtor's liability through conduct of the debtor. See Continental Casualty Company v. Carr, (In re WR

Grace and Company), 900 F.3d 126, 136.

As stated in the Kardi Corp. case, which I've previously cited, if there is an identity of interest in between the debtors and the non-debtor really sees with regard to the related conduct, which would not exist as a liability to the third-party, but for the debtor's conduct is the proper subject of a third-party injunction.

Similarly, the court in In re FirstEnergy Solutions Corp, 606 BR 720 (Bankr. N.D. Ohio), referred to an identity of interest with the debtor, and between the debtor and the third-party claimant, where the debtor is primarily liable and one can view the non-debtor parties as secondarily liable, is the relevant consideration.

So in construing the propriety of the Court's exercise of its power to impose a non-consensual third-party release, that type of relationship must underpin the release, otherwise the release would be too broad. It would release, for example, the claims based on a guarantee, which is a separate factual premise than the debtor's conduct. It would, for example, in this instance release a claim if one of the Sackler's negligently prescribed an opioid to someone, which clearly under the case law is guided by the Quigley case, would not be the proper subject of a third-party release.

So while I firmly believe that I have jurisdiction

and power under Article 1 and slash Article 3 of the dichotomy of the Constitution, and there is a sufficient source of that power in the Bankruptcy Code itself, in Sections 105 and 1123(a)(6), as well as in the Court's inherent equitable power, which has been recognized by bankruptcy scholars in this area, including and applying to third-party injunctions, claim injunctions and releases. See, for example Adam J. Levitin's article "Toward A Federal Common Law of Bankruptcy: Judicial Lawmaking in a Statutory Regime", 80 Am. Bankr. L.J. 1 (2006).

I believe that they, to the extent that one is not imposing a release of a truly derivative claim, the claim needs to be sufficiently bound up in the debtor's own actions, albeit that it's a separate independent legal claim that would be payable, if recoverable, to the third-party, as opposed to the debtor for the claim to be subject to the injunction.

In that regard, regardless whether I, in applying the standard, which I still have not yet gotten to, as to whether the third-party claim release is appropriate or not, would require that the shareholder releases in paragraph 10.7(b), by the releasing parties, be further qualified than they now are. To apply where, again, following the guidance of the Quigley case, a debtor's conduct or the claims asserted against it or a legal cause or a legally relevant

factor to the cause of action against the shareholder released party, otherwise the release would improperly extend to, for example, the prescription example that I just gave.

On the other hand, having read the objecting states complaints against the Sacklers, which is noted not only by me, but by former Chief District Judge McMann in her Purdue opinion, essentially dovetailed with the objecting states' claims against the debtors. Those claims, that is, would be properly covered by the shareholder injunction.

As I said, that leaves still the issue of whether under the applicable standards and the facts of this case, the third-party releases should be imposed. Those standards vary among the circuits. In the Second Circuit, in the In Re Metromedia Fiber Network, Inc. case, 416 F.3d 136, (2d Cir. 2005), the circuit went through a number of circumstances where courts have exercised their power, including under Section 105 of the Bankruptcy Code, in furtherance of Section 1123(a)(6) and observed that courts have approved non-debtor releases when the estate receives substantial consideration, the enjoined claims would channel to a settlement fund, rather than extinguished. The enjoined claims would indirectly impact the debtors' reorganization by way of indemnity or contribution and the plan otherwise provided for the full payment of the enjoined

claims.

The court went on to state, however, that this is not a matter of factors or prongs and further that no case has tolerated non-debtor releases absent the finding of circumstances that may be characterized as unique. Recognizing further that such releases can be abused, particularly if they are for insiders, and need to be supported by sufficient findings by the Bankruptcy Court.

The Third Circuit has a similar, but somewhat different, standard as laid out in the Exide case, where the court, with the citations omitted, but citing among other cases In re Continental Airlines, 203 F.3d 203 (3d Cir. 2000), "To grant non-consensual releases a court must assess fairness, necessity to the reorganization and make specific actual findings to support these conclusions. These considerations might include whether 1) the non-consensual release is necessary to the success of the reorganization; the releasees have provided a critical financial contribution to the debtor's plan; the releasees' financial contribution is necessary to make the plan feasible and the release is fair to the non-consenting creditors, i.e. whether the non-consenting creditors received reasonable compensation in exchange for the release."

Other circuits, including the Fourth and Eleventh Circuits and the Sixth Circuit have applied a multifactor

test as well that is in some ways similar; 1) There is an identity of interests between the debtor and the third-party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the debtor's estate;

The non-debtor has contributed substantial assets to the reorganization;

The injunction is essential to reorganization — namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor;

The affected class or classes have voted overwhelmingly to accept the plan;

The plan provides a mechanism to pay for all, or substantially all, of the claims in the class or classes affected by the injunction;

The plan provides an opportunity for those claimants who choose not to settle to recover in full; and

The bankruptcy court made a record of specific factual findings that support its conclusions.

The Seventh Circuit has a very broad standard, although noting the -- the potential for abuse, whether it needs to be a finding that the release was an essential component of the plan, the fruit of long-term negotiations, and achieved by the exchange of good and valuable

consideration that will enable unsecured creditors to realize distribution in the case. In re Ingersoll, Inc., 562 F.3d 856 (7th Cir. 2009). Again, according to the Second Circuit, none of these factors is dispositive, but they do need to be considered I relation to the record, and they do need to be in the context of truly unique circumstances, where the release is necessary to the plan.

And certainly, the circumstances of this case are unique. Every Chapter 11 case has its own unique factors and difficulties, but I believe this case is the most complex case given the issues before the parties and ultimately the Court that I have ever seen and that has come before the courts under Chapter 11. At least, that view is confirmed by the parties to this case who were represented by extremely capable and experienced counsel.

It is also clear to me that, for the reasons I've already stated, the monetary contributions by the Sacklers are absolutely critical to the confirmation of this Chapter 11 plan. Without them, I believe the plan would completely unravel, including the complex interrelated settlements that depend upon the amount of consideration being supplied, as well as the non-monetary consideration.

There's also the case that the plan has been overwhelmingly accepted, including by the classes affected by the third-party release, well above the 75 percent

supermajority in Section 524(g), and recognizing the proper classification scheme of the plan, over 95 percent of the creditors in classes where there are objections.

It is also clear to me that the amount being paid by the Sackler released parties or the shareholder released parties is, in fact, substantial. As I noted earlier, not only is it substantial in dollar terms, I believe it's the largest amount that shareholders have paid in such a context ever.

It has been argued that either in light of the aggregate amount of the claims or the amount of the Sacklers' wealth is not substantial. And I've considered that point carefully. As I noted, I would wish the amount would be even higher, however as a raw matter, it is undoubtedly a substantial amount. Moreover, and this highlights the distinction from this case, from one of the factors that I've cited, which is that the plan, "provides a mechanism to pay for all or substantially all of the class or classes affected by the injunction."

Clearly, that will not occur here as I've already found the United States' claim, for example, is receiving only under one percent of a recovery and it's fair to assume that other claims that have yet to be liquidated would come nowhere close to being paid in full.

On the other hand, there have been a number of

cases that have held that a full recovery is not necessary, and indeed, one would question why you really need a third-party release when you can project a full recovery anyway. See In re Fansteel Foundry Corp., 2018 Bankr. LEXIS 3309, (Bankr. S.D. Iowa Oct. 26, 2018) and Behrmann v. National Heritage Foundation Inc. 663 F.3rd 704 (4th Cir. 2011).

A more relevant consideration, I believe, is whether the plan in its third-party release provision is, in fact, fair, not just to the estate generally and all of the creditors in the estate, but also to those who are bearing the brunt of the third-party release, which is the view under the Third Circuit standard, and I believe a proper one. The concept of marshalling from two different sources of recovery, in some cases, including the Dow case that I've frequently cited, has been cited as an authority for imposing a third-party release. Marshaling does not require a payment in full, generally. It only requires payment in full from the sources of specific recovery, rather, the full amount of the sources available from the marshaled claims. And I have analyzed the fairness of the settlement on the third-party claimants from the perspective of their recovery if they were allowed to pursue their third-party claims. And it's in that context, if at all, that the rights of the third-parties in the amount that they would recover is relevant to the question of whether there's a substantial

contribution to the reorganization.

It is, without doubt, the case that without these releases the Sackler shareholder released parties would not agree to the payments under the plan, and they, understandably I believe, are insisting on that because that is their consideration in return for the consideration they are providing to the estate. I've already concluded that without the releases the plan would unravel and in all likelihood, the Debtors case would convert to a case under Chapter 7 of the Bankruptcy Code.

In that context, I've already found that from the Debtor's estate unsecured creditors like the objecting creditors would in all likelihood recover nothing or at most, as set forth in the unrefuted liquidation analysis by Mr. Delaconte, no more than their pro rata share of $600 million which is a high-case scenario that I am skeptical about.

I've already gone through the dilutive effect resulting from conversion of the case to Chapter 7. The question is whether in that scenario the third-parties could pursue the Sackler released parties to make up the amount that they would have lost from the estate distribution by pursuing their third-party claims.

In large measure, my analysis of that reasonably projected outcome is quite similar to my analysis of the

collectability and merits of the estate claims against the Sacklers. Although I believe that the fraudulent transfer claims against certain of the Sacklers are possibly the strongest of its suite of claims against them and they would clearly be aggressively pursued by a Chapter 7 trustee. The problem is that the senior claims of the United States and the costs and risks of pursuing them would eat up most of the value.

As far as the third-party claims are concerned, they do derive from the same facts pertaining to the Debtor's activities, operation, and marketing with respect to opioids, but are further narrowed to claims against the directors and controlling shareholders related to those activities. Again, we did not have a full trial regarding the merits of such claims; however, the record before me included the same types of arguments that I'm gone through already with respect to the Sacklers' defenses to the estate claims, which would include veil-piercing and breach of fiduciary duty and the like which all involve conduct by controlling shareholders and directors, and I won't repeat them here because I believe they equally apply to the third-party claims.

In addition, the same issues pertaining to collection apply, except that the well-recognized ability to break through a spendthrift trust, if in fact -- this is

under U.S. law -- if, in fact, it was the recipient of a fraudulent transfer would not apply to the third-party claims which are not fraudulent transfer claims but rather direct claims which would have to be asserted against the Sacklers -- all of them -- and/or their companies which are held in trust in the bankruptcy-proof trust structure testified to by Mr. Cushing. I'm not, again, ruling that that structure could not be breached, but I believe it would be very difficult to do so, particularly where the settlement which the trust and the trustees have agreed -- or prepared to agree to was undercut.

So it would appear to me that the aggregate recovery by the objecting third-parties in respect of their claims against the Debtor and against the third-parties -- which, again, I have narrowed to claims that fit within the Quigley rubric -- would exceed materially their recovery if I did not confirm the plan and they pursued their third-party claims separately as well as their claims against the Debtor in the inevitable liquidation of the Debtor under Chapter 7.

A related argument made by the objectors is that, contrary to what I've just gone through, the plan does not satisfy the best interest test of Section 1129(a)(7) of the Bankruptcy Code. There is a statutory response to that argument that under the plain meaning of Section 1129(a)(7)

I believe is well taken.

That section, again, provides that with regard to a party that has accepted its treatment under the plan, such holder of the claim will receive or retain under the plan on account of such claim -- and I want to emphasize that phrase -- on account of such claim property of a value as of the effective date of the plan that is not less than the amount that such holder would so receive -- and I'm emphasizing the words "so receive" -- or retain in the Debtor were liquidated under Chapter 7 of this title. It is clear to me that as a matter of grammar, the comparison is between the amount that the objecting creditor would receive under the plan on account of its claim and what it would so receive, again, on account of its claim, under Chapter 7 and would not look to rights that it would retain against third-parties.

I recognize that the interpretation of Section 1129(a)(7) by two of my colleagues who I greatly respect in In re Ditech Holding Corporation, 606 BR 544 (Bankr. SDNY 2019) and In re Quigley Company, 437 BR 102 (Bankr. SDNY 2010), are to the contrary, that one should look, if one can make a reasoned determination, at the rights that one would have, not in respect of one's claim, but in respect of other third-party claims in a liquidation in comparison to the rights that one would have based on one's claim under the

Chapter 11 plan. Neither of those cases, however, addresses the plain meaning argument that I've just gone through, and I believe the plain meaning would rule here.

Importantly though, I have not limited my ruling to the plain meaning interpretation that I just gave. I have instead assessed, based on the evidence before me in this settlement hearing context, albeit what I believe would be recovered by the objecting creditors in a Chapter 7 case, both on account of their claims and on account of the third-party claims. And based on that assessment, I have concluded that they would recover more, or at least as much as, that recovery if confirm with the plan.

In both of the Ditech and Quigley cases, the courts stated that if the recovery from non-debtor sources, i.e., the claims that would be released under the plan, were neither speculative nor incapable of estimation or speculative an hypothetical, then the analysis could be done. In both of those cases, the courts determined -- in one case, based on various admissions by the debtor, that is the Quigley case -- as to the settlement history over a 20-year period of such types of claims and at least some evidence, which was the only evidence offered by the plan proponent, which, again, has the burden of proof, which showed that at least for a relatively short period -- January 1 through June 30, 2019 -- there were payments on

settlements that could be evaluated, and, therefore, one could evaluate settlement payments generally, and, therefore, the claims were capable of being estimated, the plan proponents hadn't carried their burden of proof. The objecting states have suggested that a similar failure of proof exists here given the absence of any expert testimony to try to value the claims of the objecting states against third-parties, namely, the Sacklers and their related entities.

It is true there is no such expert testimony, but I believe it would have to be expert fact testimony, not an assessment of the strengths and weaknesses of the claims, including the cost of pursuing them, the risks of collection, and the dilutive effect of all of the other claims that would be pursued by all of the other creditors in this case, including all of the other states who are otherwise agreeing to the plan because it is perfectly obvious that they would not agree to let the objecting states alone pursue the shareholder released parties on the theories that would equally apply under those states' laws.

Collectively, the states and territories in this case filed proof of claims aggregating in an unliquidated amount at least $2.156 trillion. The objecting states share of that adds up to $482,947,000 or roughly 22.5 percent of all of the filed claims by the states and territories. That

comes down to 450 billion or less than 21 percent if you exclude West Virginia which was not raising this issue. If you factor in all of the other claims, some of which would clearly have third-party claim rights, you're talking about a largely dilutive effect on the recovery on top of the liability and claim collection issues that I've already described.

I believe that given the paucity of any settlement history here with the exception of the payment to the state of Oklahoma by the Sacklers and their payment to the United States in respect of their civil claims, that assessment, which is fundamentally an assessment by the court of the legal risks and implementation risks of pursuing a lawsuit is a proper assessment, and I conclude again that the settlement is fair to the objecting states after having conducted that assessment. Their claims in large measure would depend upon, to the extent they are independent of the Debtors truly -- and, therefore, not truly derivative claims -- would depend largely on finding whether any of the Sacklers was personally responsible for the misconduct of Purdue. Such a trial might actually show that. I believe the testimony before me was inconclusive on that point, although, clearly, I accept that there is substantial risks for the Sacklers, that point would be won by the objecting states. So in addition to that risk for the reason I've

already stated, there are substantial cost and collection risks that I don't need to go through again.

As far as the gravamen or the proof that would need to be shown, I've not gone through every state's applicable law on this point, but I will note that the main case that they have cited in their briefs -- Grayson v. Nordic Construction, Inc., 92 Wn.2d 548 (1979) and State v. Ralph Williams, North West Chrysler Plymouth, Inc., 87 Wn.2d 298, 322 (1976) -- both of which found individual liability based upon the controlling shareholders personal actions for many of the unlawful acts and practices taken by that person's corporation.

The last argument made by the objecting states is that the nonconsensual third-party release and injunction is a violation of their sovereignty and police power. There is no such bar in the Bankruptcy Code itself.

The Bankruptcy Code and the judicial code, in certain carefully prescribed instances, recognize the police power of states and other governmental entities but only in limited contexts. Thus, in Section 362(b)(2), Congress provided an exception to the automatic stay for the liquidation of a claim in the exercise of police power but stayed its payment, and such claims are, in fact, as is well recognized, not exempt from Chapter 11 debtor's discharge.

Similarly, 28 U.S.C. Section 1452 precludes the

removal to the bankruptcy court, which is generally permitted under that section, of a pending cause of action if it is one that is asserting the police power. The scope of the police power in those exceptions has not been decided definitively by the second circuit. As noted in a thorough discussion in In re General Motors, LLC, Ignition Switch Litigation, 69 F.Supp.3d 404 (SDNY 2014), the exception -- the definition of police power, for purposes of these exceptions, has evolved over the years from a focus on distinguishing between actions to enforce the police with respect to conduct on the one hand and actions to provide for financial recovery on another.

After Board of Governors of the Federal Reserve systems, the MCorp. Financial, Inc., 502 U.S. 32, 40 (1991), the focus has turned more from the subjective merits of the government entities exercise of its police power in a given case only to the purpose of the law that the governmental unit is attempting to enforce, even if that purpose, as is well recognized, may include the payment of money. I accept that broader definition of the police power. The fact that a governmental entity is looking to collect money, I believe is not enough to take it out of the police power exception.

But, again, that exception is a limited one in the Bankruptcy Code and the judicial code. It is well recognized, indeed the 10th Circuit states that it is a

matter of Hornbook law that actions excepted from the automatic stay, including under the police power, may be subject to specific injunctive relief under Section 105(a), In re Western Real Estate Fund, 922 F.2d 592, 599 (10th Cir.) as I previously cited and In re Commonwealth Companies, Inc., United States v. Commonwealth Companies, Inc., 913 F.2d 518 (8th Cir. 1990). See also 3 Collier on Bankruptcy P 362.05 and, as that discussion notes, the legislative history to the section which recognizes the power to enjoin, notwithstanding that the injunction is of the police power, 143 Cong.Rec. H109 50-03, 1997 WL 712488 H109 50, (November 12, 1997) and H.Rept 95-595 95th Congress 1st Session (September 8, 1977), "Subsection B lists five exceptions to the automatic stay. The effect of an exception is not to make the action immune from injunction."

As far as the limitation on the power to assert the police power, as least as far as a general assertion of states' rights over the power of the Bankruptcy Code, see In re Peabody Energy Corp., 958 F.3d 717 (8th Cir. 2020). And in fact, plan injunctions, at least in one instance and a recent one, have been imposed without any qualms about the police power authority. See California Department of Toxic Substances Control v Exide Holdings, Inc., 2021 U.S. Dist. LEXIS 138478 (D. Del. July 26, 2021).

At this point, given the states' agreement,

including the objecting states' agreement, to the public private allocation and the NOAT allocation under the plan and the carve outs from the plan release, the only thing of tangible note that the states would be obtaining here would be money which they've actually agreed to put to use under the plan for abatement purposes and which they're not disputing the validity of -- in fact, the remarkable reconstructive nature of such provisions.

The objecting states nevertheless state that the plan deprives them of establishing a sufficient civil punishment for the released claims, and certainly, that is a valid aspect of the police power, namely, the sending of a message to others who might similarly, if it is proven against them, be shown to have improperly engaged in conduct that would subject them to the liability that the states assert they would have the ability to impose here and that is being released.

It is clear to me, however, that the states cannot have it both ways. They cannot have the results of the plan and have further punishment than the plan already provides. They are not (indiscernible) to make that choice, unlike 80 percent of their state brethren and sisters, but the consequences of such additional punishment would be to the detriment of all of the states and the creditors in this case.

The element of punishment, besides the loss of all of Purdue and the money the Sacklers are paying, also includes, I believe, the agreement by the Sacklers and the Debtors to provide the comprehensive document depository which includes waivers by the Debtors of attorney-client privilege for future analysis by the States and third-parties.

Ms. Conroy, who has been pursuing Purdue and the Sacklers longer than anyone and harder than anyone, I believe, has noted that that feature of the settlement is perhaps the most important one -- even more important than the billions of dollars being paid by Sackler family members.

It is especially important in the public context raised by the objecting states. It will provide far more transparency to the conduct of Purdue and those it did business with and those who regulated it, including some of these very objectors, including the state where Purdue's main offices are, Connecticut, and the federal government, which of course also regulated Purdue.

That record is extremely important, not only for continuing to pursue lawsuits against other parties, but also to guide legislatures and regulators as to how better to address a company that has a legal product that is also incredibly dangerous.

As I've noted the other aspects of the plan that deal with NewCo, also provide a model for either further self-regulation or regulation by regulatory bodies.

Each of the four members of the Sackler family who testified during the evidentiary hearing before me was asked would they apologize for their role and conduct related to Purdue. Their reactions, as perhaps is typical of a family, varied. None would state an explicit apology, which I suppose is understandable given the legal risks they face in making such an apology before a settlement, whether there's an objection to the settlement, although I will note that in a somewhat similar context, I have received an apology to victims of misconduct.

One of the witnesses, frankly, did not accept any level of responsibility. The other three with differing degrees of emotion did in terms of stating their regret for what their company had done. A forced apology is not really an apology. So we will have to live without one.

The writer Standahl wrote that most people do not forgive, they just forget. Given the nature of this settlement, including the document depository, forgetting will be impossible. To me, those elements of the settlement more than justify the admittedly serious implications, even in a context where the real relief now being sought by the states has been agreed by them in overriding their assertion

of their own independent police power rights.

So assuming that the change to Section 10.07(b) of the plan will be made, and I will not confirm the plan if it isn't made that I outlined, and assuming one other change that I believe is necessary, I will confirm the plan. I do so agreeing with the Creditors Committee and everyone else on the other side of the table, including the Debtors from the Sackler family, that I wish the plan had provided for more, but I will not jeopardize what the plan does provide for by denying the confirmation.

The other change to the plan that I believe is required is to the provision found at Paragraph 11.1(e) of the plan on Page 146, which directs people who prosecute a cause of action for a nonopioid-excluded claim, which is truly a derivative claim in the normal definition of the term, unless such person first obtains leave from the bankruptcy court.

Consistent with my remarks to counsel for the Canadian Municipalities, that provision should be made clear that it provides only to causes of action that colorably is a non-opioid-excluded claim, i.e. if the cause of action is, for example, for a fraudulent transfer claim brought by Purdue Canada or some other claim, it should not have to go through the bankruptcy court.

So I will confirm the plan only if the following

phrase is added after the phrase "non-opioid-excluded claim" in the third line of 11.1(e) "if such cause of action colorably is a non-opioid-excluded claim." That is different than the stricken language which said the claim must be colorable. This is one that is colorably an excluded claim.

So as I noted at the beginning of this hearing, I have an over one-hundred-page confirmation order I have not reviewed in detail. I've given you a several hours' long ruling, for which I apologize for the length of. I will go through the confirmation order carefully, but I will confirm the plan if it is modified in the two ways that I've noted during my ruling.

MR. HUEBNER: Your Honor, thank you very much with tremendous apologies for even needing to speak at all after a six-and-a-half-hour bench ruling without a break. There are two housekeeping matters with respect to statutes of limitations and the injunction, which I will ask Mr. Kamenetzky to in a minute. Those will hopefully only take 45 seconds. I have one thing before that, Your Honor, that I also raise with some hesitation.

During the course of the six and a half hours, Your Honor, I believe, we might have misheard, but we might have heard you say that the majority of the Sacklers' assets are in trusts organized under the bailiwick of Jersey. For

the record, Your Honor, we think you may have intended to refer to the Mortimer A side of the family.

According to the testimony, including his report at JX3092 at Docket 3488, the A side of the family has substantial assets in trust under bailiwick of Jersey. The documents also reflect that the B side, which is the Raymond side, which is largely the domestic side, does not have equally significant assets outside the United States. They do have put in record evidence --

THE COURT: They do have them in spendthrift trust.

MR. HUEBNER: Exactly, Your Honor. We were quite confident that you didn't mean to rely on the majority of their overall assets being in Jersey trusts, but rather in various trusts. The A side has a lot of money in Jersey. The B side does not, which is what the evidence shows. And we just wanted to make sure that, as you said, the record accurately reflected what you found in that respect.

THE COURT: As I said in the beginning of my ruling, I will go through it and correct any misstatements that I made to that effect, although the ruling won't change.

MR. HUEBNER: Perfect, Your Honor.

THE COURT: The B side has most of its assets in spendthrift trusts.

MR. HUEBNER: Thank you, Your Honor. I think we all know what the facts are. They are uncontroverted. That was the only point. Let me now put myself back on mute and ask Mr. Kaminetzky to handle two quick housekeeping matters. And I believe there is nothing further, certainly, from the Debtors.

THE COURT: Okay.

MR. KAMINETZKY: Your Honor, Benjamin Kaminetzky of Davis Polk. For the Debtors, again, with apologizes. You must be exhausted. Two, I hope, administrative matters. The first back to the preliminary injunction.

Following the entry of the Court's bridge extension on Monday, which is Docket No. 286 in the Adversary proceeding No. 19-08289, the preliminary injunction is now set to expire today.

As I mentioned on Friday, there is a provision in the proposed confirmation order that will extend the preliminary injection through the effective date, that is Paragraph 56(a) of the proposed confirmation order. Bankruptcy Rule 3020(e) in Paragraph 66 of the order provide that the confirmation order be stayed until the expiration of 14 days after the entry of the order unless the Court orders otherwise.

There will therefore be a small gap in the protection afforded by the preliminary injunction and the

voluntary injunction unless the Court enters a second bridge order.

So as I foreshadowed last Friday, the Debtors respectfully request that the Court enter another bridge order extending the preliminary injunction to entry of the confirmation order and the expiration of the 14-day period, stay period we just described. So I guess I could go on, but we've spoken to the UCC, the AHC and MSGE and they support this. And given my colloquy with the Court on Friday about the Debtor's intention to seek the second bridge order today, I assume the nonconsenting states are in a position to affirm their voluntary compliance with the extension rather than to be formally bound by it, which is consistent with past practices.

So if the representatives of nonconsenting states are on, and could indicate that on the record, that would be wonderful. I see Mr. Gold.

MR. GOLD: Your Honor, Matthew Gold from Kleinberg Kaplan representing Washington, Oregon, and District of Columbia, although maybe I should let Mr. Troop go first, but can Your Honor hear me?

THE COURT: Yes, I can, thanks.

MR. GOLD: I would defer to Mr. Troop who speaks on behalf of more states, if he wishes to go first. Otherwise, I'm prepared to speak.

MR. TROOP: Your Honor, Andrew Troop on behalf of the nonconsenting states. I have not received any information or suggestion that the members of the nonconsenting states will not continue to abide voluntarily with the preliminary injunction or its extension. We did not solicit on that point. Specifically, I will defer to any law on phone if they think otherwise, but I don't think there should be an issue, Your Honor.

THE COURT: Okay.

MR. GOLD: Thank you, Your Honor. This is Matthew Gold again. As Mr. Troop said, we certainly have not had any opportunity to discuss with our clients this particular request. I think it would have been far preferrable if the Debtors, in soliciting the opinions of all those other parties, had spoken to us first rather than making us request in open court during the hearing, but it is obviously too late for that.

The one question that I do not understand from the way Mr. Kaminetzky put it, is that we have been given to understand that that the effective date under the plan occurs not 14 days after the entry of the confirmation order, but at least 82 days after the entry of the confirmation order.

So what Mr. Kaminetzky is requesting here is not a two-week extension of the injunction, but a three-month

extension of the injunction. And I would at least appreciate some clarification from Mr. Kaminetzky on that point so that we can understand what is considered brief or not in this context.

THE COURT: Fair point. I think it wouldn't be limited by time, right? It's limited by definition?

MR. KAMINETZKY: I'm sorry. The confirmation order extends the, the proposed confirmation order extends the preliminary injunction to the effective date. The effective date is still the effective date of the plan. Those are two different things.

THE COURT: Right.

MR. KAMINETZKY: So the order would give us the bridge to the effective date.

THE COURT: So this is time to get the order in and to have it be an effective order.

MR. KAMINETZKY: Yes.

THE COURT: So I think it is 14 days unless there's a stay pending appeal.

MR. KAMINETZKY: That's correct. And Your Honor, just on the point -- I said this was going to happen last Friday. This is not a surprise at all.

THE COURT: It wasn't a surprise to me. Look, I am perfectly happy to have the states continue to agree as opposed to having it imposed on them. There's precedential

value to that that I understand. But if they weren't to agree, in all likelihood, I would extend the injunction through the entry of the confirmation order and the order being a final order.

MR. KAMINETZKY: Thank you, Your Honor. The second issue, as Your Honor knows, the shareholders settlement agreement contains a unique enforcement mechanism which we call the snapback in the event that certain breaches of the shareholder settlement agreement occur, the MDT can trigger a snapback by filing a notice with the Court, at which point, both the shareholder releases and the shareholder injunction will unwind with respect to any breaches by the shareholder parties and the MDT, and the releasing parties could then sue the breaching shareholder parties under the release causes of action.

To ensure that these remedies are maximally effective, it is necessary to preserve those claims during the life of the settlement agreement or until the parties subject to the snapback have fully performed their obligations. According to Section 10.9 of the plan and Paragraph 32(a) of the confirmation order, they toll any statue of limitations that apply to the shareholder release claims.

However, we are faced with a potential very small gap because those provisions of the plan and confirmation

order will not take effect until the 14-day stay of the confirmation order expires. And we're facing the end of the tolling provisions in Section 108(a)(2) and the limitations in 546(a)(1)(A) because we're approaching the second anniversary of our filing.

So we have a proposed order which is to make sure that the tolling provisions provided by Section 10.9 of the plan is in place as soon as possible and before the 14-day stay runs.

So the proposed order does effectuate only that tolling provision to the plan and confirmation order. It will start now. It tolls the applicable statute of limitations for the shareholder release claims in exactly the same way as it's provided by the plan in Paragraph 32(a) of the confirmation order. The tolling order is to remain effective until the later of the date of the confirmation order becomes final and if the confirmation order is vacated or reversed, 225 days after the date when that occurs so folks have plenty of time to file their complaints.

This is not controversial --

THE COURT: Is this -- sorry to interrupt you, Mr. Kaminetzky. Is this a stipulated order with the Sacklers? So they're agreeing to this?

MR. KAMINETZKY: Yeah. Both sides, A and B, agree to this and I can't imagine anyone would object --

THE COURT: Okay.

MR. KAMINETZKY: -- given that this is just a way to maximally preserve the claims if, God forbid, there's a breach. We can provide that to Your Honor.

THE COURT: You can submit that to chambers.

MR. KAMINETZKY: Okay. Perfect.

THE COURT: When does that period expire? I mean I don't think it expires tonight, right?

MR. KAMINETZKY: No. We have --

THE COURT: It will get entered tomorrow then.

MR. KAMINETZKY: Yeah. We have September 15th or 16th depending on how you count. So we'll get that on file.

THE COURT: Okay. So you can submit that to chambers and it will get entered tomorrow. I expect the confirmation order probably will get entered tomorrow. I do have a brief calendar in the morning, but I'll be able to go through it.

MR. KAMINETZKY: Okay. Thank you, Your Honor.

MR. HIGGINS: Your Honor, very briefly, Ben Higgins for the United States Trustee. May I be heard briefly, Your Honor?

THE COURT: Sure.

MR. HIGGINS: Thank you, Your Honor. Just on a procedural note now that Your Honor has ruled. The United States Trustee intends to file a formal motion for a stay

pending appeal. As part of that motion, we would be seeking an expedited hearing.

Consistent with the case management order, Your Honor, we have conferred with Debtors' counsel. We have not yet reached an agreement on an expedited briefing or hearing schedule, but as the case management order directs, Your Honor, we'll reach out to counsel again tonight and if we're unable to reach an agreement regarding scheduling, we know to contact chambers as the case management order requires.

THE COURT: Okay. That's fine.

MR. HUEBNER: Your Honor, just so everybody is clear, so we don't get a cascade of emergency pleadings like this, I think Mr. Gold correctly referred to before, it is of record in this case and should be well known to everybody and if it's not, they should be come familiar with it, but our DOJ settlement approved by this Court after a multi-hour hearing as well, expressly contemplates a settlement -- a sentencing hearing not earlier than 75 days after the entry of the confirmation order. And emergence not earlier than eight days -- then seven days after that, which is why, as Your Honor has actually advised all parties at multiple recent hearings, including the KERP hearing, this company can't come out for several months and I think at this point, you know, to start burdening the docket with emergency motions, there's got to be a way to work this out more

thoughtfully than unnecessary emergency motions when there cannot be an emergence for really rather quite a while.

We don't want anybody to be prejudiced, we understand that. That's the kind of thing we're trying to be in dialog about, but we have a history here where we're in dialog with people and we're waiting for a thoughtful response and then they just never call back or email and file something that costs the Estate a lot of resources as multiple parties all have to think about it and respond to it.

So what I said on the very first day of this case, at the very first hearing, still holds two years later. Please just call us and let's see if we can work something out that is efficient and not a waste of taxpayer resources and Estate resources that does nothing but drain money from abatement and saving lives.

THE COURT: Ms. Lee is very good in keeping my calendar. She knows better than I do how long things will take. Don't tell her that because she's probably valuable to any number of law firms if they knew that. She'll find time that makes sense. I don't think it is an emergency, Mr. Higgins. I really don't, which is something you should take into account before making such a motion.

MR. HIGGINS: Understood, Your Honor. That's why we reached out Mr. Huebner twice about this and we will

continue to talk with him to work on a schedule that works for everybody, Your Honor.

THE COURT: Among other things, I would hope that someone would actually be able to read the last six hours of what I was talking about before they actually decided to do something.

MR. HIGGINS: Of course, Your Honor.

THE COURT: Okay. Anything else?

MR. KAMINETZKY: Nothing from the Debtor.

THE COURT: Thank you all. Thanks, everyone.

(Whereupon, these proceedings were concluded at 4:49 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: September 1, 2021